

LOUIS R. RIGBY
Mayor
JOHN ZEMANEK
Councilmember At Large A
DOTTIE KAMINSKI
Councilmember At Large B
DANNY EARP
Councilmember District 1



CHUCK ENGELKEN
Councilmember District 2
BILL BENTLEY
Councilmember District 3
KRISTIN MARTIN
Councilmember District 4
JAY MARTIN
Councilmember District 5
NANCY OJEDA
Mayor Pro-Tem
Councilmember District 6

CITY COUNCIL MEETING AGENDA

Notice is hereby given of a Regular Meeting of the La Porte City Council to be held September 10, 2018, beginning at 6:00 PM in the City Hall Council Chambers, 604 W. Fairmont Parkway, La Porte, Texas, for the purpose of considering the following agenda items. All agenda items are subject to action.

1. **CALL TO ORDER**
2. **INVOCATION** – The invocation will be given by Rev. Brian Christen, La Porte Community Church.
3. **PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance will be led by Councilmember Nancy Ojeda.
4. **PUBLIC COMMENTS** (Limited to five minutes per person.)
5. **CONSENT AGENDA** *(All consent agenda items are considered routine by City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember requests an item be removed and considered separately.)*
 - (a) Consider approval or other action regarding minutes of the meeting held on August 27, 2018 - P. Fogarty
 - (b) Consider approval or other action authorizing the City Manager to execute a subordination agreement with lender for Ybarra Restaurants, Inc., in connection with El Toro Restaurant 380 Agreement project - C. Alexander
 - (c) Consider approval or other action rejecting Bid #18021 for Automotive Parts - C. Daeumer
 - (d) Consider approval or other action awarding Bid #18023 for Bayshore Park Waterline Relocation project - D. Pennell
6. **DISCUSSION AND POSSIBLE ACTION**
 - (a) Discussion and possible action regarding the purchase of golf carts utilizing BuyBoard Contract 529-17 - A. Osmond
 - (b) Discussion and possible action authorizing the Mayor to execute an Interlocal Agreement with the City of Morgan's Point for Municipal Court Services - C. Alexander
7. **PUBLIC HEARINGS AND ASSOCIATED ORDINANCES**
 - (a) Public hearing to receive comments regarding the City of La Porte Fiscal Year 2018-2019 Proposed Budget - M. Dolby
 - (b) Consider approval or other action regarding an Ordinance approving and adopting the City of La Porte, Texas' Fiscal Year 2018-19 Proposed Budget - M. Dolby
8. **AUTHORIZATIONS**
 - (a) Consider approval or other action regarding appointment of members to various City boards, committees, and commissions - P. Fogarty

9. REPORTS

- (a) Receive report of the Drainage and Flooding Committee Meeting - Councilmember Jay Martin

10. ADMINISTRATIVE REPORTS

- Planning and Zoning Commission Meeting, Thursday, September 20, 2018
- Fiscal Affairs Committee Meeting, Monday, September 24, 2018
- La Porte Development Corporation Board Meeting, Monday, September 24, 2018
- City Council Meeting, Monday, September 24, 2018
- Zoning Board of Adjustment Meeting, Thursday, September 27, 2018

- 11. COUNCIL COMMENTS** regarding matters appearing on the agenda; recognition of community members, city employees, and upcoming events; inquiry of staff regarding specific factual information or existing policies. Councilmembers Ojeda, J. Martin, K. Martin, Kaminski, Zemanek, Bentley, Engelken, Earp and Mayor Rigby

12. ADJOURN

The City Council reserves the right to meet in closed session on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code (the Texas open meetings laws).

In compliance with the Americans with Disabilities Act, the City of La Porte will provide for reasonable accommodations for persons attending public meetings. To better serve attendees, requests should be received 24 hours prior to the meeting. Please contact Patrice Fogarty, City Secretary, at 281.470.5019.

CERTIFICATION

I certify that a copy of the September 10, 2018 , agenda of items to be considered by the City Council was posted on the City Hall bulletin board on September 4, 2018.

Patrice Fogarty



**Council Agenda Item
September 10, 2018**

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Council Agenda Item September 10, 2018

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Mayor
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Mayor Pro-Tem

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF LA PORTE AUGUST 27, 2018

The City Council of the City of La Porte met in a regular meeting on **Monday, August 27, 2018**, at the City Hall Council Chambers, 604 West Fairmont Parkway, La Porte, Texas, at **6:00 p.m.** to consider the following items of business:

1. **CALL TO ORDER** – Mayor Rigby called the meeting to order at 6:00 p.m. Members of Council present: Councilmembers Ojeda, Zemanek, J. Martin, Bentley, Kaminski, Engelken, and Earp. Also present were City Secretary Patrice Fogarty, Assistant City Manager Jason Weeks and Assistant City Attorney Clark Askins. Councilmember Kristin Martin was absent.
2. **INVOCATION** – The invocation was given by Shane Klinkerman, La Porte First Assembly of God.
3. **PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance was led by Councilmember Chuck Engelken.
4. **PRESENTATIONS, PROCLAMATIONS, and RECOGNITIONS**
(a) Recognition – Employee of the 2nd Quarter 2018 – Bianca Cuccerre (Recreation Center Specialist) – City of La Porte Parks and Recreation Department – Mayor Rigby

Mayor Rigby recognized Bianca Cuccerre as Employee of the 2nd Quarter 2018.

5. **PUBLIC COMMENTS** (Limited to five minutes per person.)

Jay Gipson, 901 S. Iowa, addressed Council with concerns of high school students parking on both sides of the street in the neighborhood and requested the City put up “No School Parking” signs.

Chuck Rosa, 812 S. Virginia, addressed Council and commented on property tax rates.

Bob Wagstaff, 9614 Rustic Gate, informed he will speak during the public hearing portion of the meeting.

6. **CONSENT AGENDA** *(All consent agenda items are considered routine by City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember requests an item be removed and considered separately.)*

- (a) Consider approval or other action regarding minutes of the meeting held on August 13-14, 2018 – P. Fogarty

- (b) Consider approval or other action regarding a Resolution authorizing the resale of tax delinquent property located at Lot 24, Block 70, Town of La Porte – S. Wolny
- (c) Consider approval or other action awarding Bid #18020 for Northwest Park Pool Building- R. Epting
- (d) Consider approval or other action awarding Bid #18016 for Carpet and Vinyl Installation – C. Alexander
- (e) Consider approval or other action regarding a Resolution authorizing the City Manager to execute documents in relation to the 2018-2019 STEP Comprehensive Grant through the Texas Department of Transportation – R. Parker
- (f) Consider approval or other action regarding a Resolution authorizing the City Manager to execute documents in relation to the 2018-2019 STEP CMV (Commercial Motor Vehicle) Grant through the Texas Department of Transportation – R. Parker
- (g) Consider approval or other action authorizing the City Manager to execute a Water Service Agreement and Sanitary Sewer Service Agreement with Triten Real Estate Partners for its facility at 4100 Malone Drive, in the Bayport Industrial District – D. Pennell
- (h) Consider approval or other action authorizing the City Manager to execute a Water Service Agreement and Sanitary Sewer Service Agreement with Triten Real Estate Partners for its facility at 9701 New Decade Drive, in the Bayport Industrial District – D. Pennell
- (i) Consider approval or other action authorizing the purchase of non-residential size water meters from Core and Main – D. Pennell

Regarding Items E and F, Councilmember Zemanek requested a statistical analysis be placed in the Friday memo.

Councilmember Engelken made a motion to approve all Consent Agenda items pursuant to staff recommendations. Councilmember Earp seconded the motion. **MOTION PASSED UNANIMOUSLY 8/0. Councilmember K. Martin was absent.**

7. PUBLIC HEARINGS AND ASSOCIATED ORDINANCES

(a) Public hearing to receive comments regarding recommendation by the Planning and Zoning Commission to approve zone change request #18-92000007, for a change from General Commercial (GC) to Planned Unit Development (PUD) on a 4.22 acre tract of land located on the east side of S. 16th St., and north of the W. M St. right-of-way and legally described as Lots 1-32, Block 1144 and Lots 17-32 & Tracts 1-16, Block 1143, La Porte Subdivision; consider approval or other action regarding an Ordinance amending Chapter 106 “ Zoning” of the Code of Ordinances by changing the zoning classification of a 4.22 acre tract of land located on the east side of S. 16th St., and north of the W. M St. right-of-way and legally described as Lots 1-32, Block 1144 and Lots 17-32 & Tracts 1-16, Block 1143, La Porte Subdivision, from General Commercial (GC) to Planned Unit Development (PUD) – I. Clowes

The public hearing opened at 6:14 p.m. City Planner Ian Clowes presented a summary.

There being no public comments, the public hearing closed at 6:15 p.m.

Councilmember Bentley made a motion to accept the recommendation by the Planning and Zoning Commission and to adopt an Ordinance amending Chapter 106 “Zoning” of the Code of Ordinances by changing the zoning classification of a 4.22 acre tract of land located on the east side of S. 16th St., and north of the W. M St. right-of-way and legally described as Lots 1-32, Block 1144 and Lots 17-32 & Tracts 1-16, Block 1143, La Porte Subdivision, from General Commercial (GC) to Planned Unit Development (PUD). Mayor Rigby seconded the motion.

Prior to council action, Assistant City Attorney Clark Askins read the caption of the Ordinance AN ORDINANCE AMENDING CHAPTER 106 “ZONING” OF THE CODE OF ORDINANCES OF THE CITY OF LA PORTE, BY CHANGING THE ZONING CLASSIFICATION OF A 4.22 ACRE TRACT OF LAND LOCATED ON THE EAST SIDE OF S. 16TH ST. AND NORTH OF THE W. M STREET R.O.W. AND LEGALLY DESCRIBED AS LOTS 1-32, BLOCK 1144 AND LOTS 17-32 & TRACTS 1-16, BLOCK 1143, LA PORTE SUBDIVISION, FROM GENERAL COMMERCIAL (GC) TO PLANNED UNIT DEVELOPMENT (PUD); MAKING CERTAIN FINDINGS OF FACT RELATED TO THE SUBJECT; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.

Mayor Rigby asked for the vote on the pending motion. **MOTION FAILED 1/7.**

Ayes:	Mayor Rigby
Nays:	Councilmembers Bentley, Engelken, Ojeda, Zemanek, Kaminski, Earp and J. Martin
Absent:	Councilmember K. Martin

(b) Public hearing to receive comments regarding the recommendation by the Planning and Zoning Commission to approve Special Condition Use Permit #18-91000008 to allow for a Skilled Nursing Facility, to locate on a 6.95-acre tract of land within a PUD zoning district, located on the west side of Underwood Rd., north of Fairmont Pkwy., and south of Caniff Rd. and legally described as Tracts 718B, 719, and 719A, La Porte Outlots; consider approval or other action regarding an Ordinance amending the Code of Ordinances of the City of La Porte, Chapter 106 “Zoning”, by granting Special Conditional Use Permit #18-91000008, to allow for a Skilled Nursing Facility to be located on a 6.95-acre tract of land within a PUD zoning district and legally described as Tracts 718B, 719, and 719A, La Porte Outlots – I. Clowes

The public hearing opened at 6:18 p.m. City Planner Ian Clowes presented a summary.

Councilmember Earp asked if there will be enough parking at the proposed facility. Mr. Clowes responded yes, there will be plenty of parking.

Councilmember Martin asked if there were any plans for drainage. Mr. Clowes advised there is an approved general plan approved by the Planning and Zoning Commission but there are no details of a drainage plan that has to be approved by the City Engineer and Public Works. Councilmember Martin also stated he would have liked to have seen more information on the developer’s other previously sites and developments.

President of Summer Winds Homeowners’ Association Bob Wagstaff, 9614 Rustic Gate, spoke in favor of the facility.

The public hearing closed at 6:21 p.m.

Councilmember Engelken made a motion to accept the recommendation by the Planning and Zoning Commission. Councilmember Kaminski seconded. **MOTION PASSED UNANIMOUSLY 8/0. Councilmember K. Martin was absent.**

Ayes: Mayor Rigby, Councilmembers Bentley, Engelken, Ojeda, Zemanek, Kaminski, Earp, and J. Martin
Nays: None
Absent: Councilmember K. Martin

Prior to council action, Assistant City Attorney Clark Askins read the caption of **Ordinance 2018-3718 AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF LA PORTE, CHAPTER 106, MORE COMMONLY REFERRED TO AS THE ZONING ORDINANCE OF THE CITY OF LA PORTE, BY GRANTING SPECIAL CONDITIONAL USE PERMIT NO. 18-91000008, TO ALLOW FOR A NURSING CARE FACILITY (SKILLED NURSING FACILITY) USE IN A PLANNED UNIT DEVELOPMENT (PUD) ZONING DISTRICT, ON A 6.95 ACRE TRACT OF LAND AND BEING LEGALLY DESCRIBED AS TRACTS 718B, 719, AND 719A, LA PORTE OUTLOTS, LA PORTE, HARRIS COUNTY, TEXAS; MAKING CERTAIN FINDINGS OF FACT RELATED TO THE SUBJECT; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.**

8. AUTHORIZATIONS

- (a) Consider approval or other action regarding appointment of members to various City boards, committees, and commissions – P. Fogarty

City Secretary Patrice Fogarty presented a summary.

Council directed City Secretary Patrice Fogarty to bring back attendance of all boards; meetings that were cancelled due to a lack of a quorum; and the attendance requirements of each board.

Councilmember Zemanek made a motion to postpone appointments to the next meeting after providing information. Councilmember Bentley seconded. **MOTION PASSED UNANIMOUSLY 8/0. Councilmember K. Martin was absent.**

9. REPORTS

- (a) Receive report of the La Porte Development Corporation Board Meeting – Councilmember Nancy Ojeda

Councilmember Nancy Ojeda provided an update of the La Porte Development Corporation Board Meeting held prior to the City Council Meeting.

10. ADMINISTRATIVE REPORTS

City Manager Corby Alexander advised Council the City is required to publish a notice for the public hearing for the adoption of the City's budget and a notice has been posted for the tax rate presented during the budget meetings and the posting of that rate does not hold Council to the tax rate that was presented at those budget meetings.

- 11. **COUNCIL COMMENTS** regarding matters appearing on the agenda; recognition of community members, city employees, and upcoming events; inquiry of staff regarding specific factual information or existing policies – Councilmembers Engelken, Earp, Ojeda, J. Martin, K. Martin, Kaminski, Zemanek, Bentley and Mayor Rigby

Councilmember Engelken congratulated Bianca Cuccerre as Employee of the 2nd Quarter 2018 and the Summer Winds Homeowners Association for getting a good neighbor; Councilmember congratulated

Bianca Cuccerre as Employee of the 2nd Quarter 2018; recognized the Police Department for being active in the community; Councilmember Ojeda congratulated Bianca Cuccerre as Employee of the 2nd Quarter 2018; commented she is exciting for the Skilled Nursing Facility and encouraged members in the audience to participate in the City University program; Councilmember J. Martin commented he voted in support of the Skilled Nursing Facility but is disappointed in the lack of background information of the owner and requested an audit of hotel taxes paid in La Porte; Councilmember Kaminski congratulated Bianca Cuccerre as Employee of the 2nd Quarter 2018 and wished Councilmember K. Martin the best on the upcoming birth of her baby; Councilmember Zemanek congratulated Bianca Cuccerre as Employee of the 2nd Quarter 2018; commented an individual of quality was lost due to the passing of Senator John McCain; and congratulated the Little League team in Hawaii; Councilmember Bentley congratulated Bianca Cuccerre as Employee of the 2nd Quarter 2018; commented he enjoyed the La Porte Fire Department Banquet and continues to be impressed with the professionalism and esprit de corps of City employees; and Mayor Rigby congratulated Bianca Cuccerre as Employee of the 2nd Quarter 2018; and presented a trophy from the Houston Yacht Club that was awarded to the City.

12. **ADJOURN** - There being no further business, Councilmember Engelken made a motion to adjourn the meeting at 6:30 p.m. Councilmember Zemanek seconded the motion. **MOTION PASSED UNANIMOUSLY 8/0. Councilmember K. Martin was absent.**

Patrice Fogarty, City Secretary

Passed and approved on September 10, 2018.

Mayor Louis R. Rigby

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: <u>September 10, 2018</u>
Requested By: <u>Corby D. Alexander</u>
Department: <u>Administration</u>
Report: Resolution: Ordinance:

<u>Budget</u>	
Source of Funds:	<u>N/A</u>
Account Number:	<u>N/A</u>
Amount Budgeted:	<u>N/A</u>
Amount Requested:	<u>N/A</u>
Budgeted Item:	<u>N/A</u>

Exhibits: Subordination Agreement

Exhibits: Chapter 380 Agreement

SUMMARY & RECOMMENDATION

On October 10, 2016, the City entered into a Chapter 380 Agreement with Roland Ybarra for the right-of-way at West Main Street and Sens Road with the intent of building a new El Toro restaurant at this location. On December 12, 2016, this agreement was amended to list the fair market value as 75% of the appraised value, consistent with City policy at that time.

Recently, the City was notified that Ybarra Restaurants (a.k.a. El Toro) is ready to move forward with their project and in order to secure a loan with the bank, the bank is requesting the City sign a Subordination Agreement. The Subordination Agreement means that in the event El Toro defaults, the money owed to the City would be paid once the bank is paid. The current 380 agreement has a subordination agreement clause. The attached agreement would be consistent with that clause.

Action Required by Council:

Consider approval or other action authorizing the City Manager to execute the proposed subordination agreement.

Approved for City Council Agenda

Corby Alexander, City Manager

Date

EXHIBIT D: GUARANTY OF PAYMENT, PROMISSORY NOTE, DEED OF TRUST

GUARANTY OF PAYMENT

GUARANTY dated Oct. 10, 2016, made by **ROLAND YBARRA**, having an address of _____ (the "Guarantor"), in favor of **CITY OF LA PORTE, TEXAS**, having an address of 604 W. Fairmont Parkway, La Porte, Texas 77571 (the "City").

YBARRA RESTAURANTS, INC., a Texas corporation, (the "Borrower"), desires to obtain financial accommodations from the City in connection with the development of a new business site. The City, as reflected in that Chapter 380 Agreement for Waiver of Payment for Closing of Street Right-of-Way dated Oct. 10, 2016, is unwilling to extend the accommodations to Borrower unless it receives this Guaranty. The Guarantor wishes the accommodations to be made and will derive advantage from such accommodations.

Accordingly, to induce the City in its discretion, to make such financial accommodations:

Section 1. Guaranty. The Guarantor hereby unconditionally guarantees to the City, the prompt payment, when due, whether by acceleration or otherwise, of all present or future obligations or liabilities of the Borrower to the City, whether now existing or arising after the date of this Guaranty, secured or unsecured, absolute or contingent, together with all modifications, extensions or renewals of the obligations or liabilities. This Guaranty covers obligations and liabilities incurred by the Borrower in any capacity (including as maker, endorser, guarantor, accommodation party or otherwise) and also includes the amount of any payment made by the Borrower to the City, which payment is rescinded or must otherwise be returned by the City upon the insolvency or bankruptcy of the Borrower. This Guaranty covers obligations and liabilities incurred by the Borrower under any indemnification provisions set forth in the documents evidencing and securing such obligations and liabilities. Such obligations and liabilities, together with interest and all fees, costs, expenses, attorneys' fees and other costs of collection incurred or paid by the City, are together referred to as the "Indebtedness".

Section 2. Guaranty Absolute. The Guarantor will pay all Indebtedness in accordance with its terms. The liability of the Guarantor under this Guaranty is absolute and unconditional irrespective of:

- (i) any lack of validity or enforceability of any documents evidencing (or relating) to the Indebtedness;
- (ii) any change in the time, manner, place or amount of payment or in any other term of all or any of the Indebtedness, or any other amendment or waiver of or any consent to departure from the terms of the Indebtedness;

- (iii) any exchange, release or non-perfection of any collateral or lien securing all or any part of the Indebtedness, which exchange, release or non-perfection the Guarantor expressly agrees will not be deemed an unjustifiable impairment of the collateral;
- (iv) any release or amendment or waiver of or consent to departure from any other guaranty, for all or any part of the Indebtedness;
- (v) any settlement or compromise with any Borrower or any other person relating to the Indebtedness; or
- (vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, any Borrower in respect of the Indebtedness or the Guarantor in respect of this Guaranty.

This Guaranty will continue to be effective, or be reinstated, as the case may be, if at any time any of the Indebtedness is rescinded or must otherwise be returned by the City upon the insolvency or bankruptcy of any Borrower or otherwise, all as though such payment had not been made.

Section 3. Waiver. The Guarantor waives presentment, demand, diligence, notice of acceptance and any other notice with respect to any of the Indebtedness and/or this Guaranty and any requirement that the City exhaust any right or take any action against the Borrower or any other person or entity or any collateral.

Section 4. Subrogation, Reimbursement and Indemnity. Each Guarantor waives (a) all right to seek reimbursement or indemnity from the Borrower, and (b) any right to subrogation it may have or acquire as result of performance under this Guaranty.

Section 5. Representation and Warranties. Each Guarantor represents and warrants:

- (a) The execution and delivery of this Guaranty and the performance of its obligations under this Guaranty have been authorized by all necessary action.
- (b) No authorization, or registration with, any court or governmental department, commission, agency or instrumentality, is or will be necessary to the valid execution, delivery or performance of the Guaranty.
- (c) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms.
- (d) The Guarantor has made whatever inquiry into the financial or other affairs of the Borrower, and the terms of any Indebtedness, as it deems necessary or desirable prior to executing this Guaranty and has not relied on the City for any such information.
- (e) The Guarantor shall provide the City with any and all financial information and/or financial statements as requested by the City, including annual financial statements and manually signed copies of federal and state tax returns, which shall be satisfactory to the City.

- (f) The Guarantor agrees not to transfer any of its assets other than for full and adequate consideration, without the written consent of the City.

Section 6. Acceleration. The Guarantor agrees that, if the maturity of any of the Indebtedness is accelerated, by bankruptcy or otherwise, as against the Borrower, the maturity shall also be deemed accelerated for the purposes of this Guaranty, and without demand on or notice to the Guarantor.

Section 7. Amendments, etc. This Guaranty represents the entire agreement of the parties. No amendment or waiver of any provision nor consent to departure by the Guarantor from any provision is effective unless in writing and signed by the City, and then the waiver or consent will be effective only in the special instance and for the specific purpose given.

Section 8. Notices. All notices required or permitted under this Guaranty shall be given to the parties at the address stated in this Guaranty (or at any other address a party may designate in writing), sent by first class mail, postage prepaid, and is deemed complete upon mailing.

Section 9. No Waiver; Remedies. No failure on the part of the City to exercise, and no delay in exercising, any right under this Guaranty shall operate as a waiver of such right, nor shall any single or partial exercise of any right preclude any further exercise of such right or of any other right. All remedies provided in this Guaranty and in any document evidencing or relating to any Indebtedness are cumulative.

Section 10. Right of Set-off; Security Interest. On the occurrence and during the continuance of any default under the Indebtedness, the City is authorized at any time, without notice to the Guarantor to set off and apply to any unpaid Indebtedness: (a) any amounts which the City from time to time may owe the Guarantor, including any balance or share of any general or special deposit, certificate of deposit, savings certificates or other account (regardless of the source or intended use of any funds in such account), and (b) any other property, tangible or intangible, owned by or in which the Guarantor has an interest which may be in the possession or control of the City, in which accounts and other property the Guarantor grants the City a security interest. This right is in addition to and not in limitation of any other rights, including of set-off, which the City may have by law.

Section 11. Continuing Guaranty; Assignment. This Guaranty is a continuing guaranty and will: (a) remain in full force and effect until payment in full of the Indebtedness and all other amounts payable under this Guaranty, (b) extend to and cover every modification, waiver, extension or renewal of and every obligation accepted in substitution for, the Indebtedness, (c) be binding upon the Guarantor, his successors and assigns and; (d) inure to the benefit of and be enforceable by the City and its successors, transferees and assigns.

Section 12. Other Guarantors. The obligations of each Guarantor under this Guaranty shall be joint and several as to each other and all other guarantors of the Indebtedness. This

Guaranty shall not be impaired or affected in any way as to the Guarantor by any termination, revocation, release, modification, discharge or substitution of collateral or changes as to any or all of the liabilities or undertakings of any other guarantor.

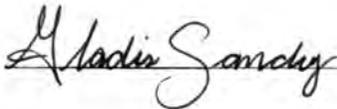
Section 13. Guaranty Not Modified By Bankruptcy. Neither the Guarantor's obligation in accordance with the terms of this Guaranty, nor any remedy for the enforcement, nor the amount of the Indebtedness of the Borrower will be impaired, modified, or limited, in any manner whatsoever by any impairment, modification, discharge, limitation of the Indebtedness of the Borrower or its estate in bankruptcy or any remedy for the enforcement, resulting from the operation of any present or future provision of the Bankruptcy Code of the United States or other statute, or from the decision of any court interpreting any of the same, and each Guarantor is obligated under this Guaranty. The amount of the Indebtedness will, for the purposes of this Guaranty, be determined as if no such impairment, stay, modification, discharge, or limitation had occurred.

Section 14. Governing Law. This Guaranty will be governed by, and construed in accordance with, the laws of the State of Texas. In the event the City brings any action hereunder in any court of record of Texas or the Federal Government, the Guarantor consents to and confers personal jurisdiction over the Guarantor by such court or courts and agrees that service of process may be made upon the Guarantor by mailing a copy of such process to the Guarantor.

Section 15. Waiver of Jury Trial. EACH GUARANTOR WAIVES TRIAL BY JURY IN ANY ACTION UNDER OR RELATING TO THIS GUARANTY AND TO THE INDEBTEDNESS OF THE BORROWER TO THE BANK.

Witness:

ROLAND YBARRA





Roland Ybarra

DEED OF TRUST AND SECURITY AGREEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: Oct. 10, 2016
Grantor: YBARRA RESTAURANTS, INC.
Mailing Address: 7529 Bayway Drive, Baytown, Texas 77520
Trustee: CLARK T. ASKINS
Mailing Address: P.O. Box 1218, La Porte, Texas 77572
Beneficiary: CITY OF LA PORTE, TEXAS
Mailing Address: 604 West Fairmont Parkway, La Porte, TX 77571

Real Estate Lien Note:

Date: Oct. 10, 2016
Amount: ONE HUNDRED SIXTEEN THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$116,100.00)
Maker: YBARRA RESTAURANTS, INC.
Payee: CITY OF LA PORTE, TEXAS

Property (including any improvements):

TRACT 1

Being a 2.403 acre tract of land out of the T.W. Lee Subdivision, Richard Pearsall Survey, A625, Harris County, Texas, according to the survey performed by H. Carlos Smith, Engineers & Surveyors, Inc., on April 12 thru 13, 1984. The 2.403 acre tract is further described as being part of Lots 1 thru 10 and Lots 12 thru 20, all of Lots 21 thru 30, Block 707, including the alley contained therein and a portion of "A" Street; both the alley and street having been vacated, abandoned and closed on

March 18, 1981, by the City of La Porte Ordinance No. 1252. The 2.403 acre tract of land is more particularly described by metes and bounds as follows:

Beginning at a 5/8 inch iron rod found for the Southeast corner of Block 698, T.W. Lee Subdivision, according to the plat recorded in Volume 67, Page 1, Harris County Deed Records, said corner being coincident with the West right-of-way line of 25th street (based on a width of 60.00 feet) and the North right-of-way line of "A" street (based on a width of 60.00 feet);

Thence South, passing at 60.00 feet the Northeast corner of Block 707 and being coincident with West right-of-way line of 25th street (based on a width of 60.00 feet) and the East boundary line of Block 707 for a total distance of 452.50 feet to a 5/8 inch iron rod found for the Southeast corner of the aforesaid 2.403 acre tract;

Thence West, coincident with the North right-of-way line of West Main Street (based on a width of 114.00 feet; original 85.00 feet) a distance of 221.00 feet to a 5/8 inch iron rod set for the Southwest corner of the aforesaid 2.403 acre tract;

Thence North, coincident with the East right-of-way line of Sens Road (26th street) (based on a width of 105.00 feet, original 60.00 feet) as widened and recorded under Harris County Film Code No. 176-97-1700; a distance of 100.00 feet to a 5/8 inch iron rod set for corner;

Thence N 4° 17' 21" W, coincident with East right-of-way line of Sens Road as widened, a distance of 353.49 feet to a 5/8 inch iron rod set for the Northwest corner of the aforesaid 2.403 acre tract, same corner being coincident with the North right-of-way line of "A" street as vacated, abandoned and closed by the City of La Porte Ordinance No. 1252 on March 8, 1981, and the South boundary line of Block 698;

Thence East, coincident with the North right-of-way line of "A" Street and the South boundary of Block 698, a distance of 247.44 feet to the POINT OF BEGINNING.

TRACT 2

Lots 1 through 30, Block 708, Town of La Porte, according to map or plat thereof recorded in Volume 67, Page 1, of the Map/Plat Records of Harris County, Texas SAVE AND EXCEPT that 7.5 foot strip of land conveyed to Harris County, Texas by deed recorded under Clerk's File No. D231169.

For value received and to secure payment of the note, and as required by Section 3.3 of the 380 Agreement for Waiver for Payment for Closure of Street Right-of-Way executed by Grantor, Grantor conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. If Grantor performs all the covenants and pays the note according to its terms, or alternatively, if the Note is forgiven in accordance with the terms of the Note and said 380 Agreement for Waiver of Payment for Closure of Street Right-of-Way, this deed of trust shall have no further effect, and Beneficiary shall release it at Grantor's expense.

Grantor's Obligations

Grantor agrees to:

1. keep the property in good repair and condition;
2. pay all taxes and assessments on the property when due;
3. preserve the lien's priority as it is established in this deed of trust;
4. maintain, in a form acceptable to Beneficiary, an insurance policy that:
 - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
 - b. contains an 80% coinsurance clause;
 - c. provides fire and extended coverage, including windstorm coverage;
 - d. protects Beneficiary with a standard mortgage clause;
 - e. provides flood insurance at any time the property is in a flood hazard area; and
 - f. contains such other coverage as Beneficiary may reasonably require;
5. comply at all times with the requirements of the 80% coinsurance clause;
6. deliver the insurance policy to Beneficiary and deliver renewals to Beneficiary at least ten days before expiration;
7. keep any buildings occupied as required by the insurance policy; and
8. if this is not a first lien, pay all prior lien notes that Grantor is personally liable to pay and abide by all prior lien instruments.

Beneficiary's Rights

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
2. If the proceeds of the note are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid.
3. Beneficiary may apply any proceeds received under the insurance policy either to reduce the note or to repair or replace damaged or destroyed improvements covered by the policy.
4. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this deed of trust.
5. If Grantor defaults on the note or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, and the default continues after Beneficiary gives Grantor notice of the default and the time within which it must be cured, as may be required by law or by written agreement, then Beneficiary may:
 - a. declare the unpaid principal balance and earned interest on the note immediately due;
 - b. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
 - c. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note.

Trustee's Duties

If requested by Beneficiary to foreclose this lien, Trustee shall:

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
2. sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty; and
3. from the proceeds of the sale, pay, in this order:
 - a. expenses of foreclosure, including a commission to Trustee of 5% of the bid;
 - b. to Beneficiary, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
 - c. any amounts required by law to be paid before payment to Grantor; and
 - d. to Grantor, any balance.

General Provisions

1. If any of the property is sold under this deed of trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.
5. If any portion of the note cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.
6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.
7. Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future rent and other income and receipts from the property. Leases are not assigned. Grantor warrants the validity and enforceability of the assignment. Grantor may as Beneficiary's licensee collect rent and other income and receipts as long as Grantor is not in default under the note or this deed of trust. Grantor will apply all rent and other income and receipts to payment of the note and performance of this deed of trust, but if the rent and other income and receipts exceed the amount due under the note and deed of trust, Grantor may retain the excess. If Grantor defaults in payment of the note or performance of this deed of trust, Beneficiary may terminate Grantor's license to collect and then as Grantor's agent may rent the property if it is vacant and collect all rent and other income and receipts. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the property. Beneficiary may exercise Beneficiary's rights and remedies under this paragraph without taking possession of the property. Beneficiary shall apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Grantor's obligations under the note and this deed of trust in the order determined by Beneficiary. Beneficiary is not required to act under

this paragraph.

and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If Grantor becomes a voluntary or involuntary bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law.

8. Interest on the debt secured by this deed of trust shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

9. When the context requires, singular nouns and pronouns include the plural.

10. The term "note" includes all sums secured by this deed of trust.

11. This deed of trust shall bind, inure, to the benefit of, and be exercised by successors in interest of all parties.

12. If Grantor and Maker are not the same person, the term "Grantor" shall include Maker.

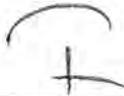
13. If Grantor transfers any part of the property without Beneficiary's prior written consent, Beneficiary may declare the debt secured by this deed of trust immediately payable. In that event Beneficiary will notify Grantor that the debt is payable; if it is not paid within thirty days after notice to Grantor, Beneficiary may without further notice of demand to Grantor invoke any remedies provided in this instrument for default. Exceptions to this provision for declaring the note due on sale or transfer are limited to the following:

- a. creation of a lien or encumbrance subordinate to this deed of trust;
- b. creation of a purchase-money security interest for household appliances;
- c. transfer by devise, descent, or operation of law on the death of a joint tenant; and
- d. grant of a leasehold interest of three years or less without an option to purchase.

14. Grantor represents that this deed of trust and the note are given for the following purposes: The indebtedness, the payment of which is hereby secured, is in part payment of the purchase price of the real property herein described, and is also secured by a vendor's lien thereon retained in Deed of even date herewith to the undersigned, and this Deed of Trust is given as additional security for the payment of said indebtedness.

EXECUTED Oct. 10, 2016.

YBARRA RESTAURANTS, INC.

BY: 

ROLAND YBARRA, President

REAL ESTATE LIEN NOTE

Date: Oct. 10, 2016
Maker: YBARRA RESTAURANTS, INC., a Texas corporation
Mailing Address: 7529 Bayway Drive, Baytown, Texas 77520
Payee: CITY OF LA PORTE, TEXAS, a municipal corporation
Place for Payment: 604 West Fairmont Parkway, La Porte, TX 77571
Principal Amount: ONE HUNDRED SIXTEEN THOUSAND ONE HUNDRED AND NO/
100 DOLLARS (\$116,100.00)

Annual Interest Rate on Unpaid Principal from Date: 0%

Annual Interest Rate on Matured, Unpaid Amounts: 18%

Terms of Payment:

This Real Estate Lien Note is delivered to Payee by Maker, to secure Maker's performance of the terms, conditions and covenants of that certain Chapter 380 Agreement for Waiver of Payment for Closure of Street Right-of-Way ("Agreement" herein) between Ybarra Restaurants, Inc., a Texas corporation (as Developer), and the City of La Porte, Texas. This Real Estate Lien Note shall be due and payable three (3) years from the effective date of said Agreement. In the event that Maker, as Developer under said Agreement, has performed each and every obligation under the Agreement by three (3) years from the effective date of said Agreement, the entire principal balance of this Real Estate Lien Note shall be forgiven and Maker's and Grantor's obligations under this Real Estate Lien Note will be deemed discharged.

Security for Payment:

Vendor's Lien retained in Deed of even date herewith from YBARRA RESTAURANTS, INC. to CITY OF LA PORTE, TEXAS, and being additionally secured by Deed of Trust of even date herewith to CLARK T. ASKINS, TRUSTEE, covering the tracts of land and property described therein, as well as adjacent property owned by Maker, to which Deed and Deed of Trust and the record thereof reference is here made for further identity of the security for this note.

Maker promises to pay to the order of Payee at the place for payment and according to the terms of payment the principal amount plus interest at the rates stated above. All unpaid amounts shall be due by the final scheduled payment date.

If Maker defaults in the payment of this note or in the performance of any obligation in any instrument securing or collateral to it, and the default continues after Payee gives Maker notice of the default and the time within which it must be cured, as may be required by law or by written

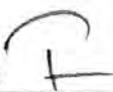
agreement, then Payee may declare the unpaid principal balance and earned interest on this note immediately due. Maker and each surety, endorser, and guarantor waive all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, protests, and notices of protest, to the extent permitted by law.

If this note or any instrument securing or collateral to it is given to an attorney for collection or enforcement, or if suit is brought for collection or enforcement, or if collected or enforced through probate, bankruptcy, or other judicial proceeding, then Maker shall pay Payee all costs of collection and enforcement, including reasonable attorney's fees and court costs, in addition to other amounts due. Reasonable attorney's fees shall be 10% of all amounts due unless either party pleads otherwise.

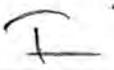
Interest on the debt evidenced by this note shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

When the context requires, singular nouns and pronouns include the plural.

YBARRA RESTAURANTS, INC.

BY: 

ROLAND YBARRA, President

BY: 

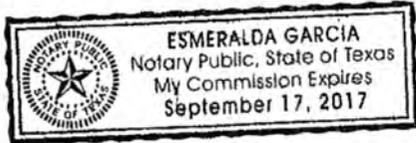
ROLAND YBARRA, Guarantor

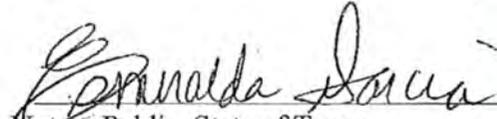
PREPARED IN THE LAW OFFICE OF:

ASKINS & ASKINS, P.C.
P.O. Box 1218
La Porte, TX 77572

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on September 14, 2016, by ROLAND YBARRA, President of YBARRA RESTAURANTS, INC.





Notary Public, State of Texas

AFTER RECORDING RETURN TO:
ASKINS & ASKINS, P.C.
P.O. Box 1218

PREPARED IN THE LAW OFFICE OF:
ASKINS & ASKINS, P.C.
P.O. Box 1218

La Porte, Texas 77571

La Porte, Texas 77571

DEED OF TRUST AND SECURITY AGREEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: Oct. 10, 2016
Grantor: YBARRA RESTAURANTS, INC.
Mailing Address: 7529 Bayway Drive, Baytown, Texas 77520
Trustee: CLARK T. ASKINS
Mailing Address: P.O. Box 1218, La Porte, Texas 77572
Beneficiary: CITY OF LA PORTE, TEXAS
Mailing Address: 604 West Fairmont Parkway, La Porte, TX 77571

Real Estate Lien Note:

Date: Oct. 10, 2016
Amount: ONE HUNDRED SIXTEEN THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$116,100.00)
Maker: YBARRA RESTAURANTS, INC.
Payee: CITY OF LA PORTE, TEXAS

Property (including any improvements):

TRACT 1

Being a 2.403 acre tract of land out of the T.W. Lee Subdivision, Richard Pearsall Survey, A625, Harris County, Texas, according to the survey performed by H. Carlos Smith, Engineers & Surveyors, Inc., on April 12 thru 13, 1984. The 2.403 acre tract is further described as being part of Lots 1 thru 10 and Lots 12 thru 20, all of Lots 21 thru 30, Block 707, including the alley contained therein and a portion of "A" Street; both the alley and street having been vacated, abandoned and closed on

March 18, 1981, by the City of La Porte Ordinance No. 1252. The 2.403 acre tract of land is more particularly described by metes and bounds as follows:

Beginning at a 5/8 inch iron rod found for the Southeast corner of Block 698, T.W. Lee Subdivision, according to the plat recorded in Volume 67, Page 1, Harris County Deed Records, said corner being coincident with the West right-of-way line of 25th street (based on a width of 60.00 feet) and the North right-of-way line of "A" street (based on a width of 60.00 feet);

Thence South, passing at 60.00 feet the Northeast corner of Block 707 and being coincident with West right-of-way line of 25th street (based on a width of 60.00 feet) and the East boundary line of Block 707 for a total distance of 452.50 feet to a 5/8 inch iron rod found for the Southeast corner of the aforesaid 2.403 acre tract;

Thence West, coincident with the North right-of-way line of West Main Street (based on a width of 114.00 feet; original 85.00 feet) a distance of 221.00 feet to a 5/8 inch iron rod set for the Southwest corner of the aforesaid 2.403 acre tract;

Thence North, coincident with the East right-of-way line of Sens Road (26th street) (based on a width of 105.00 feet, original 60.00 feet) as widened and recorded under Harris County Film Code No. 176-97-1700; a distance of 100.00 feet to a 5/8 inch iron rod set for corner;

Thence N 4° 17' 21" W, coincident with East right-of-way line of Sens Road as widened, a distance of 353.49 feet to a 5/8 inch iron rod set for the Northwest corner of the aforesaid 2.403 acre tract, same corner being coincident with the North right-of-way line of "A" street as vacated, abandoned and closed by the City of La Porte Ordinance No. 1252 on March 8, 1981, and the South boundary line of Block 698;

Thence East, coincident with the North right-of-way line of "A" Street and the South boundary of Block 698, a distance of 247.44 feet to the POINT OF BEGINNING.

TRACT 2

Lots 1 through 30, Block 708, Town of La Porte, according to map or plat thereof recorded in Volume 67, Page 1, of the Map/Plat Records of Harris County, Texas SAVE AND EXCEPT that 7.5 foot strip of land conveyed to Harris County, Texas by deed recorded under Clerk's File No. D231169.

For value received and to secure payment of the note, and as required by Section 3.3 of the 380 Agreement for Waiver for Payment for Closure of Street Right-of-Way executed by Grantor, Grantor conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. If Grantor performs all the covenants and pays the note according to its terms, or alternatively, if the Note is forgiven in accordance with the terms of the Note and said 380 Agreement for Waiver of Payment for Closure of Street Right-of-Way, this deed of trust shall have no further effect, and Beneficiary shall release it at Grantor's expense.

Grantor's Obligations

Grantor agrees to:

1. keep the property in good repair and condition;
2. pay all taxes and assessments on the property when due;
3. preserve the lien's priority as it is established in this deed of trust;
4. maintain, in a form acceptable to Beneficiary, an insurance policy that:
 - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
 - b. contains an 80% coinsurance clause;
 - c. provides fire and extended coverage, including windstorm coverage;
 - d. protects Beneficiary with a standard mortgage clause;
 - e. provides flood insurance at any time the property is in a flood hazard area; and
 - f. contains such other coverage as Beneficiary may reasonably require;
5. comply at all times with the requirements of the 80% coinsurance clause;
6. deliver the insurance policy to Beneficiary and deliver renewals to Beneficiary at least ten days before expiration;
7. keep any buildings occupied as required by the insurance policy; and
8. if this is not a first lien, pay all prior lien notes that Grantor is personally liable to pay and abide by all prior lien instruments.

Beneficiary's Rights

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
2. If the proceeds of the note are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid.
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4. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this deed of trust.
5. If Grantor defaults on the note or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, and the default continues after Beneficiary gives Grantor notice of the default and the time within which it must be cured, as may be required by law or by written agreement, then Beneficiary may:
 - a. declare the unpaid principal balance and earned interest on the note immediately due;
 - b. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
 - c. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note.

Trustee's Duties

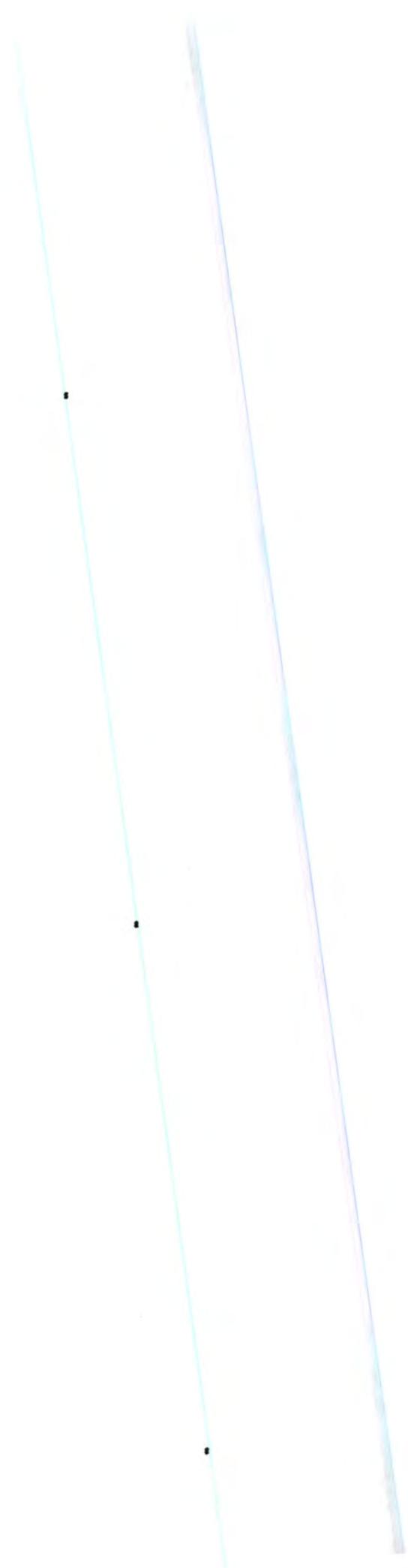
If requested by Beneficiary to foreclose this lien, Trustee shall:

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
2. sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty; and
3. from the proceeds of the sale, pay, in this order:
 - a. expenses of foreclosure, including a commission to Trustee of 5% of the bid;
 - b. to Beneficiary, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
 - c. any amounts required by law to be paid before payment to Grantor; and
 - d. to Grantor, any balance.

General Provisions

1. If any of the property is sold under this deed of trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
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this paragraph,



and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If Grantor becomes a voluntary or involuntary bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law.

8. Interest on the debt secured by this deed of trust shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

9. When the context requires, singular nouns and pronouns include the plural.

10. The term "note" includes all sums secured by this deed of trust.

11. This deed of trust shall bind, inure, to the benefit of, and be exercised by successors in interest of all parties.

12. If Grantor and Maker are not the same person, the term "Grantor" shall include Maker.

13. If Grantor transfers any part of the property without Beneficiary's prior written consent, Beneficiary may declare the debt secured by this deed of trust immediately payable. In that event Beneficiary will notify Grantor that the debt is payable; if it is not paid within thirty days after notice to Grantor, Beneficiary may without further notice of demand to Grantor invoke any remedies provided in this instrument for default. Exceptions to this provision for declaring the note due on sale or transfer are limited to the following:

- a. creation of a lien or encumbrance subordinate to this deed of trust;
- b. creation of a purchase-money security interest for household appliances;
- c. transfer by devise, descent, or operation of law on the death of a joint tenant; and
- d. grant of a leasehold interest of three years or less without an option to purchase.

14. Grantor represents that this deed of trust and the note are given for the following purposes: The indebtedness, the payment of which is hereby secured, is in part payment of the purchase price of the real property herein described, and is also secured by a vendor's lien thereon retained in Deed of even date herewith to the undersigned, and this Deed of Trust is given as additional security for the payment of said indebtedness.

EXECUTED Oct. 10, 2016.

YBARRA RESTAURANTS, INC.

BY: 
ROLAND YBARRA, President

REAL ESTATE LIEN NOTE

Date: Oct. 10, 2016

Maker: YBARRA RESTAURANTS, INC., a Texas corporation

Mailing Address: 7529 Bayway Drive, Baytown, Texas 77520

Payee: CITY OF LA PORTE, TEXAS, a municipal corporation

Place for Payment: 604 West Fairmont Parkway, La Porte, TX 77571

Principal Amount: ONE HUNDRED SIXTEEN THOUSAND ONE HUNDRED AND NO/
100 DOLLARS (\$116,100.00)

Annual Interest Rate on Unpaid Principal from Date: 0%

Annual Interest Rate on Matured, Unpaid Amounts: 18%

Terms of Payment:

This Real Estate Lien Note is delivered to Payee by Maker, to secure Maker's performance of the terms, conditions and covenants of that certain Chapter 380 Agreement for Waiver of Payment for Closure of Street Right-of-Way ("Agreement" herein) between Ybarra Restaurants, Inc., a Texas corporation (as Developer), and the City of La Porte, Texas. This Real Estate Lien Note shall be due and payable three (3) years from the effective date of said Agreement. In the event that Maker, as Developer under said Agreement, has performed each and every obligation under the Agreement by three (3) years from the effective date of said Agreement, the entire principal balance of this Real Estate Lien Note shall be forgiven and Maker's and Grantor's obligations under this Real Estate Lien Note will be deemed discharged.

Security for Payment:

Vendor's Lien retained in Deed of even date herewith from YBARRA RESTAURANTS, INC. to CITY OF LA PORTE, TEXAS, and being additionally secured by Deed of Trust of even date herewith to CLARK T. ASKINS, TRUSTEE, covering the tracts of land and property described therein, as well as adjacent property owned by Maker, to which Deed and Deed of Trust and the record thereof reference is here made for further identity of the security for this note.

Maker promises to pay to the order of Payee at the place for payment and according to the terms of payment the principal amount plus interest at the rates stated above. All unpaid amounts shall be due by the final scheduled payment date.

If Maker defaults in the payment of this note or in the performance of any obligation in any instrument securing or collateral to it, and the default continues after Payee gives Maker notice of the default and the time within which it must be cured, as may be required by law or by written

agreement, then Payee may declare the unpaid principal balance and earned interest on this note immediately due. Maker and each surety, endorser, and guarantor waive all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, protests, and notices of protest, to the extent permitted by law.

If this note or any instrument securing or collateral to it is given to an attorney for collection or enforcement, or if suit is brought for collection or enforcement, or if collected or enforced through probate, bankruptcy, or other judicial proceeding, then Maker shall pay Payee all costs of collection and enforcement, including reasonable attorney's fees and court costs, in addition to other amounts due. Reasonable attorney's fees shall be 10% of all amounts due unless either party pleads otherwise.

Interest on the debt evidenced by this note shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

When the context requires, singular nouns and pronouns include the plural.

YBARRA RESTAURANTS, INC.

BY:  _____
ROLAND YBARRA, President

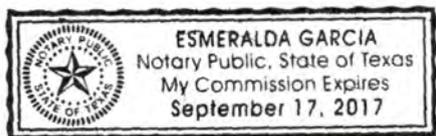
BY:  _____
ROLAND YBARRA, Guarantor

PREPARED IN THE LAW OFFICE OF:

ASKINS & ASKINS, P.C.
P.O. Box 1218
La Porte, TX 77572

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on September 14, 2016, by ROLAND YBARRA, President of YBARRA RESTAURANTS, INC.



Esmeralda Garcia
Notary Public, State of Texas

AFTER RECORDING RETURN TO:
ASKINS & ASKINS, P.C.
P.O. Box 1218

PREPARED IN THE LAW OFFICE OF:
ASKINS & ASKINS, P.C.
P.O. Box 1218

La Porte, Texas 77571

La Porte, Texas 77571

GUARANTY OF PAYMENT

GUARANTY dated Oct. 10, 2016, made by **ROLAND YBARRA**, having an address of _____ (the "Guarantor"), in favor of **CITY OF LA PORTE, TEXAS**, having an address of 604 W. Fairmont Parkway, La Porte, Texas 77571 (the "City").

YBARRA RESTAURANTS, INC., a Texas corporation (the "Borrower"), desires to obtain financial accommodations from the City in connection with the development of a new business site. The City, as reflected in that Chapter 380 Agreement for Waiver of Payment for Closing of Street Right-of-Way dated Oct. 10, 2016, is unwilling to extend the accommodations to Borrower unless it receives this Guaranty. The Guarantor wishes the accommodations to be made and will derive advantage from such accommodations.

Accordingly, to induce the City in its discretion, to make such financial accommodations:

Section 1. Guaranty. The Guarantor hereby unconditionally guarantees to the City, the prompt payment, when due, whether by acceleration or otherwise, of all present or future obligations or liabilities of the Borrower to the City, whether now existing or arising after the date of this Guaranty, secured or unsecured, absolute or contingent, together with all modifications, extensions or renewals of the obligations or liabilities. This Guaranty covers obligations and liabilities incurred by the Borrower in any capacity (including as maker, endorser, guarantor, accommodation party or otherwise) and also includes the amount of any payment made by the Borrower to the City, which payment is rescinded or must otherwise be returned by the City upon the insolvency or bankruptcy of the Borrower. This Guaranty covers obligations and liabilities incurred by the Borrower under any indemnification provisions set forth in the documents evidencing and securing such obligations and liabilities. Such obligations and liabilities, together with interest and all fees, costs, expenses, attorneys' fees and other costs of collection incurred or paid by the City, are together referred to as the "Indebtedness".

Section 2. Guaranty Absolute. The Guarantor will pay all Indebtedness in accordance with its terms. The liability of the Guarantor under this Guaranty is absolute and unconditional irrespective of:

- (i) any lack of validity or enforceability of any documents evidencing (or relating) to the Indebtedness;
- (ii) any change in the time, manner, place or amount of payment or in any other term of all or any of the Indebtedness, or any other amendment or waiver of or any consent to departure from the terms of the Indebtedness;

- (iii) any exchange, release or non-perfection of any collateral or lien securing all or any part of the Indebtedness, which exchange, release or non-perfection the Guarantor expressly agrees will not be deemed an unjustifiable impairment of the collateral;
- (iv) any release or amendment or waiver of or consent to departure from any other guaranty, for all or any part of the Indebtedness;
- (v) any settlement or compromise with any Borrower or any other person relating to the Indebtedness; or
- (vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, any Borrower in respect of the Indebtedness or the Guarantor in respect of this Guaranty.

This Guaranty will continue to be effective, or be reinstated, as the case may be, if at any time any of the Indebtedness is rescinded or must otherwise be returned by the City upon the insolvency or bankruptcy of any Borrower or otherwise, all as though such payment had not been made.

Section 3. Waiver. The Guarantor waives presentment, demand, diligence, notice of acceptance and any other notice with respect to any of the Indebtedness and/or this Guaranty and any requirement that the City exhaust any right or take any action against the Borrower or any other person or entity or any collateral.

Section 4. Subrogation, Reimbursement and Indemnity. Each Guarantor waives (a) all right to seek reimbursement or indemnity from the Borrower, and (b) any right to subrogation it may have or acquire as result of performance under this Guaranty.

Section 5. Representation and Warranties. Each Guarantor represents and warrants:

- (a) The execution and delivery of this Guaranty and the performance of its obligations under this Guaranty have been authorized by all necessary action.
- (b) No authorization, or registration with, any court or governmental department, commission, agency or instrumentality, is or will be necessary to the valid execution, delivery or performance of the Guaranty.
- (c) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms.
- (d) The Guarantor has made whatever inquiry into the financial or other affairs of the Borrower, and the terms of any Indebtedness, as it deems necessary or desirable prior to executing this Guaranty and has not relied on the City for any such information.
- (e) The Guarantor shall provide the City with any and all financial information and/or financial statements as requested by the City, including annual financial statements and manually signed copies of federal and state tax returns, which shall be satisfactory to the City.

- (f) The Guarantor agrees not to transfer any of its assets other than for full and adequate consideration, without the written consent of the City.

Section 6. Acceleration. The Guarantor agrees that, if the maturity of any of the Indebtedness is accelerated, by bankruptcy or otherwise, as against the Borrower, the maturity shall also be deemed accelerated for the purposes of this Guaranty, and without demand on or notice to the Guarantor.

Section 7. Amendments, etc. This Guaranty represents the entire agreement of the parties. No amendment or waiver of any provision nor consent to departure by the Guarantor from any provision is effective unless in writing and signed by the City, and then the waiver or consent will be effective only in the special instance and for the specific purpose given.

Section 8. Notices. All notices required or permitted under this Guaranty shall be given to the parties at the address stated in this Guaranty (or at any other address a party may designate in writing), sent by first class mail, postage prepaid, and is deemed complete upon mailing.

Section 9. No Waiver; Remedies. No failure on the part of the City to exercise, and no delay in exercising, any right under this Guaranty shall operate as a waiver of such right, nor shall any single or partial exercise of any right preclude any further exercise of such right or of any other right. All remedies provided in this Guaranty and in any document evidencing or relating to any Indebtedness are cumulative.

Section 10. Right of Set-off; Security Interest. On the occurrence and during the continuance of any default under the Indebtedness, the City is authorized at any time, without notice to the Guarantor to set off and apply to any unpaid Indebtedness: (a) any amounts which the City from time to time may owe the Guarantor, including any balance or share of any general or special deposit, certificate of deposit, savings certificates or other account (regardless of the source or intended use of any funds in such account), and (b) any other property, tangible or intangible, owned by or in which the Guarantor has an interest which may be in the possession or control of the City, in which accounts and other property the Guarantor grants the City a security interest. This right is in addition to and not in limitation of any other rights, including of set-off, which the City may have by law.

Section 11. Continuing Guaranty; Assignment. This Guaranty is a continuing guaranty and will: (a) remain in full force and effect until payment in full of the Indebtedness and all other amounts payable under this Guaranty, (b) extend to and cover every modification, waiver, extension or renewal of and every obligation accepted in substitution for, the Indebtedness, (c) be binding upon the Guarantor, his successors and assigns and; (d) inure to the benefit of and be enforceable by the City and its successors, transferees and assigns.

Section 12. Other Guarantors. The obligations of each Guarantor under this Guaranty shall be joint and several as to each other and all other guarantors of the Indebtedness. This

Guaranty shall not be impaired or affected in any way as to the Guarantor by any termination, revocation, release, modification, discharge or substitution of collateral or changes as to any or all of the liabilities or undertakings of any other guarantor.

Section 13. Guaranty Not Modified By Bankruptcy. Neither the Guarantor's obligation in accordance with the terms of this Guaranty, nor any remedy for the enforcement, nor the amount of the Indebtedness of the Borrower will be impaired, modified, or limited, in any manner whatsoever by any impairment, modification, discharge, limitation of the Indebtedness of the Borrower or its estate in bankruptcy or any remedy for the enforcement, resulting from the operation of any present or future provision of the Bankruptcy Code of the United States or other statute, or from the decision of any court interpreting any of the same, and each Guarantor is obligated under this Guaranty. The amount of the Indebtedness will, for the purposes of this Guaranty, be determined as if no such impairment, stay, modification, discharge, or limitation had occurred.

Section 14. Governing Law. This Guaranty will be governed by, and construed in accordance with, the laws of the State of Texas. In the event the City brings any action hereunder in any court of record of Texas or the Federal Government, the Guarantor consents to and confers personal jurisdiction over the Guarantor by such court or courts and agrees that service of process may be made upon the Guarantor by mailing a copy of such process to the Guarantor.

Section 15. Waiver of Jury Trial. EACH GUARANTOR WAIVES TRIAL BY JURY IN ANY ACTION UNDER OR RELATING TO THIS GUARANTY AND TO THE INDEBTEDNESS OF THE BORROWER TO THE BANK.

Witness:

ROLAND YBARRA





Roland Ybarra

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

**CHAPTER 380 AGREEMENT FOR WAIVER OF PAYMENT FOR CLOSURE OF STREET
RIGHT-OF-WAY, BETWEEN YBARRA RESTAURANTS, INC., A TEXAS CORPORATION
AND THE CITY OF LA PORTE, TEXAS**

This AGREEMENT is entered into by and between the City of La Porte, Texas, a Texas municipal corporation of Harris County, Texas (“CITY”), and Ybarra Restaurants, Inc., a Texas Corporation (hereinafter called “DEVELOPER”). DEVELOPER and CITY may be referred to jointly herein as the “Parties” and individually as a “Party.”

WITNESSETH:

WHEREAS, Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code provides statutory authority for a local government to establish and provide for the administration of one or more programs, for making loans and grants and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality;

WHEREAS, CITY has found that providing a program consisting of a grant of funds to DEVELOPER in exchange for DEVELOPER’S completion of the Project proposed by DEVELOPER will promote local economic development and stimulate business and commercial activity and create jobs within the CITY (hereafter referred to as “PROGRAM”); and

WHEREAS, the Project proposed by DEVELOPER will additionally benefit CITY by generating revenue from the assessment of ad valorem tax on personal property, inventory and real property; and

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

NOW THEREFORE, for the reasons stated in these Recitals, which are incorporated into and made part of this Agreement, and in consideration of the mutual covenants and obligations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. The Project.

1.1 DEVELOPER is planning to construct a restaurant with a minimum capital investment of at least *Five Million* (\$5 Million), more fully described in Exhibit “A” (the “Project” herein), to be located on a tract of land generally situated at the northeast corner of Sens Road and West Main Street, as more particularly described in Exhibit “B” (the “Property”).

1.2 As a precondition to implementation of the Project, DEVELOPER has determined that it would be necessary to petition CITY to close, vacate and abandon that portion of the 25th Street right-of-way situated between West Main Street and West Polk Street (the “Right-of Way” herein), which currently separates DEVELOPER’S tracts, in order to consolidate said tracts and thereafter construct the proposed restaurant and associated facilities.

City's Initials: CA Developer's Initials RY

1.3 DEVELOPER has filed an application with CITY to close, vacate and abandon the Right of Way.

1.4 Under Chapter 62, Article II of CITY's Code of Ordinances, a landowner is required to pay to CITY the fair market value of the right-of-way petitioned to be closed, in exchange for conveyance of the right-of-way to the landowner after closure. Section 62-35(b) of said Code defines "fair market value" as 75% of the appraised value of the right-of-way. An independent appraisal of the Right-of-Way determined the fair market value to be \$154,800.00, 75% of which is \$116,100.00.

1.5 In accordance with Texas Local Government Code Chapter 272 and Chapter 62 of CITY's Code of Ordinances, on Oct. 10, 2016 CITY considered DEVELOPER's application for closure of the Right-of-Way, and upon a finding of no public necessity to maintain the Right-of-Way and proper receipt of notices of Non-Objection from utilities maintaining facilities in the Right-of-Way, did on such date vote to adopt Ordinance 2016-3656, to effect the closure of Right-of-Way and convey title to same to DEVELOPER. Said Ordinance 2016-3656 and accompanying Deed Without Warranty are attached to this Agreement as Exhibit "C" and is incorporated by reference for all purposes.

1.6 In exchange for development of the Project, and attainment of certain performance standards upon completion of the Project, as more fully described herein, DEVELOPER seeks CITY's agreement to waive and credit to DEVELOPER, payment of fair market value as required under Chapter 62 of CITY'S Code of Ordinances, for closure of the Right-of-Way.

Section 2. CITY Obligations.

CITY agrees to waive DEVELOPER'S obligation to make payment of fair market value for closure of Right-of-Way, and credit such fee to DEVELOPER as a grant in accordance with this Agreement and as allowed by Texas Local Government Code Chapter 380, as an inducement to DEVELOPER to complete the Project. However, as provided in Section 3 of this Agreement, CITY'S agreement to waive payment of fair market value is conditioned on DEVELOPER's obligation to attain certain specified performance benchmarks in connection with the Project. The failure of DEVELOPER to satisfy the specified performance benchmarks shall provide CITY the right to forfeit such grant and reclaim from DEVELOPER, the fair market value of the Right-of-Way, as the term "fair market value" is defined in Section 1.4 above.

Section 3. DEVELOPER Obligations.

3.1 As a condition for CITY's waiver of DEVELOPER'S obligation to make payment of fair market value in connection with CITY's closure of the Right-of-Way on Oct. 10, 2016, and CITY'S promise to permanently forbear collection of such payment and credit same to DEVELOPER as a grant to induce completion of the Project, DEVELOPER promises to submit to CITY, and shall submit to CITY the following items, by the deadlines indicated:

- a) Proof of Certificate of Occupancy issued by CITY for restaurant building to be situated on the Property, with the restaurant building having a minimum of 7500 square feet of floor space, no later than three (3) years after the effective date of this Agreement
- b) Documentation substantiating minimum capital investment by DEVELOPER of Five Million (\$5 Million), for infrastructure, site improvements, construction, and other related improvements which are necessary to develop the proposed restaurant no later than three (3) years after the effective date of this Agreement.

3.2 DEVELOPER agrees that CITY will have the right to review the business records of DEVELOPER that relate to the Project and this Agreement in order to determine DEVELOPER'S

City's Initials: CA Developer's Initials RY

compliance with the terms of this AGREEMENT. Such review shall occur at any reasonable time and upon thirty (30) days' prior notice to DEVELOPER. To the extent reasonably possible, DEVELOPER shall make all such records available in electronic form.

3.3 Upon execution of this Agreement DEVELOPER agrees to simultaneously execute a promissory note in the amount of \$116,100.00 and a second lien position Deed of Trust in favor of CITY, with said Deed of Trust imposing a lien on and against the Property, (secondary and subordinate to lenders' liens for acquisition of the property and subsequent to the Project's construction costs funded by the first lien lenders), to secure DEVELOPER'S obligation to remit to CITY the fair market value of the Right-of-Way in the event of DEVELOPER'S breach of this Agreement. The promissory note reference in paragraph 3.3 above shall become due and payable in full three (3) years after the effective date of the note and this Agreement, but shall be forgiven and deemed discharged if DEVELOPER sooner satisfies its obligations under this Agreement.

3.5 Mr. Roland Ybarra, President of DEVELOPER, agrees that he will, as a condition of City's entering into this Agreement, execute in favor of CITY a personal guarantee in his individual capacity, in the amount of \$116,100.00.

3.6 Said guaranty, promissory note, and deed of trust are collectively attached to this Agreement as Exhibit "D" and is incorporated by reference for all purposes.

3.7 DEVELOPER shall not allow any portion of ad valorem taxes owed to CITY on the Property, or any other property owned by DEVELOPER and located within the City of La Porte, Texas to become delinquent beyond the date when due, as such date may be extended to permit protest of valuation or any appeal; nor shall DEVELOPER fail to render for taxation any personal property, including inventory and equipment, owned by DEVELOPER and located within the City of La Porte, Texas.

3.8 DEVELOPER covenants and certifies that DEVELOPER does not and will not knowingly employ an undocumented worker as that term is defined by section 2264.01(4) of the Texas Government Code. In accordance with Section 2265.052 of the Texas Government Code, if DEVELOPER is convicted of a violation under 8 U.S.D. Section 1324a(f), DEVELOPER shall repay to the CITY the full amount of the payment waived under this Agreement, plus 10% per annum from the date the waiver was made. Repayment shall be paid within 120 days after the date DEVELOPER receives notice of violation from the CITY.

Section 4. Force Majeure.

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not ("Force Majeure"), the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement shall be extended for a period of time equal to the period such party was delayed.

Section 5. Term. The term of this Agreement shall begin upon the execution hereof by both Parties (the Effective Date) and end either upon the complete performance of all obligations and conditions imposed upon DEVELOPER under this Agreement (unless sooner terminated in writing in

City's Initials: CA Developer's Initials R-T

accordance with this Agreement), or on that date which is four (4) years after the Effective Date **January 1, 2019**, whichever date occurs first.

Section 6. Indemnity.

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT ARISE OUT OF OR ARE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF CITY OR ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

Section 7. Breach and Recapture.

7.1 Breach - A breach of this Agreement shall result upon DEVELOPER'S 1) failure to satisfy any one or more of the performance benchmarks, including the failure to do so by the deadlines applicable thereto, outlined in Section 3.1 of this Agreement; 2) failure to comply with any other term or condition of this Agreement; or 3) sale of the Property to a third party without the express, written consent of CITY, during the term of this Agreement.

7.2. Notice of Breach - In the event that CITY makes a reasonable determination that DEVELOPER has breached this Agreement, then CITY shall give DEVELOPER written notice of such. DEVELOPER has thirty (30) days following receipt of said written notice to cure such breach, after which time this Agreement may be terminated by CITY, and the right of CITY to reclaim and recapture any and all funds granted to DEVELOPER under this Agreement shall then immediately accrue. Notice of breach shall be in writing and shall be delivered by personal delivery or certified mail to DEVELOPER at its address provided in Section 10 of this Agreement.

7.3. Recapture – Should DEVELOPER commit a breach of this Agreement as established in Section 7, CITY may enforce its right to reclaim and recapture the fair market value of the Right-of-Way, as conditionally granted to DEVELOPER under the terms of this Agreement, by any means lawfully available to CITY, including but not limited to foreclosure of the aforementioned Deed of Trust lien on the Property.

7.4 Termination for Misrepresentation. Notwithstanding any provision for notice of default and any opportunity to cure provided for in this Agreement, CITY may terminate this Agreement immediately by providing written notice to DEVELOPER, if DEVELOPER, its officers or signatories to this Agreement misrepresented or misrepresents any material fact or information: 1) upon which CITY relied in entering into this Agreement; 2) upon which CITY relied in making grant to DEVELOPER; or 3) which served as an inducement for CITY to make a grant to DEVELOPER.

City's Initials: JA Developer's Initials RT

Section 8. Personal Liability of Public Officials.

No employee or elected official of CITY shall be personally responsible for any liability arising under or related to this Agreement. Under no circumstances shall City's actions or obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

Section 9. Venue and Governing Law.

This Agreement is performable in Harris County, Texas and venue of any action arising out of this Agreement shall be exclusively in Harris County. This Agreement shall be governed and construed in accordance with the laws of the State of Texas.

Section 10. Notices.

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for CITY, to:

City of La Porte, Texas
604 W. Fairmont Pkwy.
La Porte, Texas 77571
ATTN: City Manager

If intended for DEVELOPER, to:

Ybarra Restaurants, Inc.
by: Roland D. Ybarra, President & Director
7529 Bayway Drive, Baytown, Tx., 77520

Section 11 Applicable Laws.

This Agreement is made subject to the provisions of the Charter and ordinances of CITY, as amended, and all applicable state and federal laws (collectively, the "Applicable Laws"), and violation of same shall constitute a default under this Agreement.

Section 12. Legal Construction.

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

Section 13. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

Section 14. Captions.

City's Initials: CA Developer's Initials RY Page 5

January 1, 2020 TOZ

accordance with this Agreement), or on that date which is four (4) years after the Effective Date ~~January 1, 2019~~, whichever date occurs first.

Section 6. Indemnity.

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT ARISE OUT OF OR ARE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, OR EMPLOYEES, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF CITY OR ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

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7.1 Breach - A breach of this Agreement shall result upon DEVELOPER'S 1) failure to satisfy any one or more of the performance benchmarks, including the failure to do so by the deadlines applicable thereto, outlined in Section 3.1 of this Agreement; 2) failure to comply with any other term or condition of this Agreement; or 3) sale of the Property to a third party without the express, written consent of CITY, during the term of this Agreement.

7.2. Notice of Breach - In the event that CITY makes a reasonable determination that DEVELOPER has breached this Agreement, then CITY shall give DEVELOPER written notice of such. DEVELOPER has thirty (30) days following receipt of said written notice to cure such breach, after which time this Agreement may be terminated by CITY, and the right of CITY to reclaim and recapture any and all funds granted to DEVELOPER under this Agreement shall then immediately accrue. Notice of breach shall be in writing and shall be delivered by personal delivery or certified mail to DEVELOPER at its address provided in Section 10 of this Agreement.

7.3. Recapture - Should DEVELOPER commit a breach of this Agreement as established in Section 7, CITY may enforce its right to reclaim and recapture the fair market value of the Right-of-Way, as conditionally granted to DEVELOPER under the terms of this Agreement, by any means lawfully available to CITY, including but not limited to foreclosure of the aforementioned Deed of Trust lien on the Property.

7.4 Termination for Misrepresentation. Notwithstanding any provision for notice of default and any opportunity to cure provided for in this Agreement, CITY may terminate this Agreement immediately by providing written notice to DEVELOPER, if DEVELOPER, its officers or signatories to this Agreement misrepresented or misrepresents any material fact or information: 1) upon which CITY relied in entering into this Agreement; 2) upon which CITY relied in making grant to DEVELOPER; or 3) which served as an inducement for CITY to make a grant to DEVELOPER.

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The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

Section 15. Successors and Assigns.

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. This Agreement **SHALL NOT** be assigned by DEVELOPER to any other person or entity, without prior, written CITY approval. Written approval of the CITY shall be required for an assignment to an Affiliate of DEVELOPER, but in such case approval shall not be unreasonably withheld. "Affiliate of DEVELOPER," as used herein, is defined as a parent, sister, partner, joint venture, or subsidiary entity of DEVELOPER; any entity in which DEVELOPER is a major shareholder, owns an equity interest, or is a joint venture or partner (whether general or limited).

Section 16. Entire Agreement.

This Agreement embodies the complete agreement of the parties hereto regarding waiver of payment of the fair market value to close the Right-of-Way in connection with the Project, superseding all oral or written previous and contemporary agreements between the parties, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

Effective this the _____ day of _____, 2016.

CITY OF LA PORTE, TEXAS

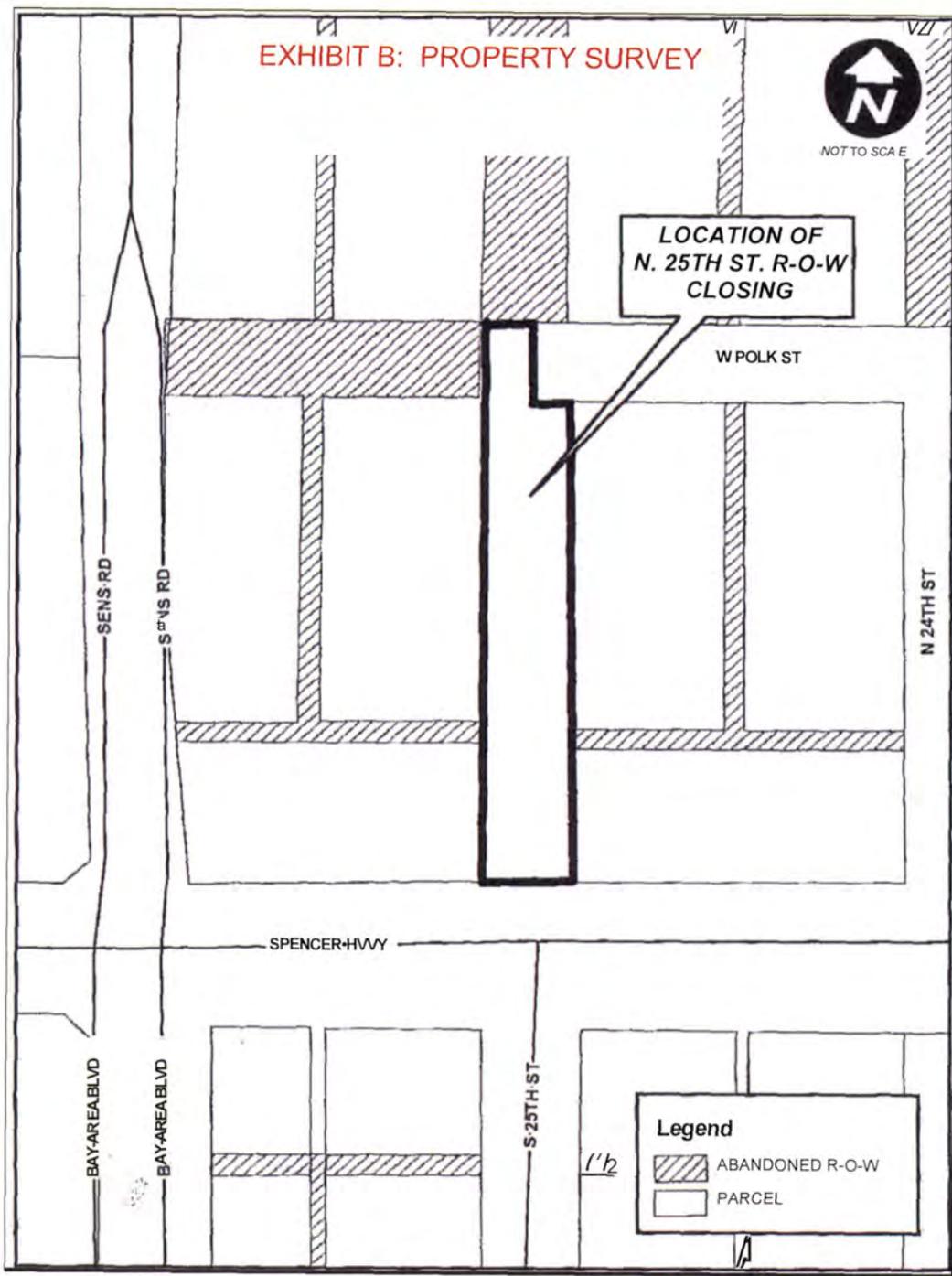
EXECUTED THIS 10 day of October, 2016, by CITY, signing by and through its City Manager.



YBARRA RESTAURANTS, INC.

EXECUTED THIS _____ day of _____, 2016, by Roland Ybarra, President





AMENDMENT TO CHAPTER 380 AGREEMENT FOR WAIVER OF PAYMENT FOR
CLOSURE OF STREET RIGHT-OF-WAY BETWEEN YBARRA RESTAURANTS, INC., A
TEXAS CORPORATION AND THE CITY OF LA PORTE, TEXAS

That Agreement dated October 10, 2016, between the City of La Porte, Texas and Ybarra Restaurants, Inc., for waiver of payment for closure of street right-of-way, is hereby amended as follows:

Section 1.2 shall be amended to read:

As a precondition to implementation of the Project, DEVELOPER has determined that it would be necessary to petition CITY to close, vacate and abandon that portion of the 25th Street right-of-way situated between West Main Street and West Polk Street, but also including that portion of West Polk Street intersected by 25th Street (the "Right-of Way" herein), which currently separates DEVELOPER'S tracts, in order to consolidate said tracts and thereafter construct the proposed restaurant and associated facilities.

Section 1.4 shall be amended to read:

"Under Chapter 62, Article II of CITY's Code of Ordinances, a landowner is required to pay to CITY the fair market value of the right-of-way petitioned to be closed, in exchange for conveyance of the right-of-way to the landowner after closure. Section 62-35(b) of said Code defines "fair market value" as 75% of the appraised value of the right-of-way. Independent appraisals of separate portions of the Right-of-Way determined the cumulative fair market value to be \$165,600.00, 75% of which is \$124,200.00."

Section 1.5 shall be amended to read:

"In accordance with Texas Local Government Code Chapter 272 and Chapter 62 of CITY's Code of Ordinances, on October 10, 2016 and December 12, 2016 CITY considered DEVELOPER's applications for closure of the Right-of-Way, and upon a finding of no public necessity to maintain the Right-of-Way and proper receipt of notices of Non-Objection from utilities maintaining facilities in the Right-of-Way, did on such respective dates vote to adopt Ordinance 2016-3656 and Ordinance 2016-~~3659~~ to effect the closure of Right-of-Way and convey title to same to Developer. Said Ordinances 2016-~~3656~~ and 2016-~~3659~~ and accompanying Deeds Without Warranty are attached to this Agreement as Exhibit C and is incorporated by reference for all purposes."

Section 3.3 shall be amended to read:

"Upon execution of this Agreement DEVELOPER agrees to simultaneously execute an amended promissory note in the amount of \$124,200.00 and amended Deed of Trust in favor of CITY, with said Deed of Trust imposing a lien on and against the Property, to secure DEVELOPER'S obligation to remit to CITY the fair market value of the Right-of-Way in the event of

DEVELOPER'S breach of this Agreement. Accordingly, the principals and/or owners of the proposed Project, shall each in their individual capacities execute in favor of CITY an amended personal guarantee in the cumulative amount of \$124,200.00."

Section 3.5 shall be amended to read:

"Mr. Roland Ybarra, President of DEVELOPER, agrees that he will, as a condition of City's entering into this Agreement, execute in favor of CITY an amended personal guarantee in his individual capacity, in the amount of \$124,200.00."

It is understood and agreed to by the parties that the all other provisions of the AGREEMENT, which is attached hereto as Exhibit A and incorporated by reference for all purposes, shall remain in full force and effect and is amended only as provided by this document.

Respectfully,

The City of La Porte, Texas

Louis R. RIGBY

By:

Signature

AGREED AND ACCEPTED:

YBARRA RESTAURANTS, INC.

By:

Roland Ybarra
Owner

AMENDED AND RESTATED GUARANTY OF PAYMENT

GUARANTY dated Dec 12, 2016, made by **ROLAND YBARRA**, having an address of _____ (the "Guarantor"), in favor of **CITY OF LA PORTE, TEXAS**, having an address of 604 W. Fairmont Parkway, La Porte, Texas 77571 (the "City").

YBARRA RESTAURANTS, INC., a Texas corporation (the "Borrower"), desires to obtain financial accommodations from the City in connection with the development of a new business site. The City, as reflected in that Chapter 380 Agreement for Waiver of Payment for Closing of Street Right-of-Way dated October 10, 2016, and Amendment to 380 Agreement for Waiver of Payment for Closing of Street Right-of-Way, dated December 12, 2016, is unwilling to extend the accommodations to Borrower unless it receives this Guaranty. The Guarantor wishes the accommodations to be made and will derive advantage from such accommodations.

Accordingly, to induce the City in its discretion, to make such financial accommodations:

Section 1. Guaranty. The Guarantor hereby unconditionally guarantees to the City, the prompt payment, when due, whether by acceleration or otherwise, of all present or future obligations or liabilities of the Borrower to the City, whether now existing or arising after the date of this Guaranty, secured or unsecured, absolute or contingent, together with all modifications, extensions or renewals of the obligations or liabilities. This Guaranty covers obligations and liabilities incurred by the Borrower in any capacity (including as maker, endorser, guarantor, accommodation party or otherwise) and also includes the amount of any payment made by the Borrower to the City, which payment is rescinded or must otherwise be returned by the City upon the insolvency or bankruptcy of the Borrower. This Guaranty covers obligations and liabilities incurred by the Borrower under any indemnification provisions set forth in the documents evidencing and securing such obligations and liabilities. Such obligations and liabilities, together with interest and all fees, costs, expenses, attorneys' fees and other costs of collection incurred or paid by the City, are together referred to as the "Indebtedness".

Section 2. Guaranty Absolute. The Guarantor will pay all Indebtedness in accordance with its terms. The liability of the Guarantor under this Guaranty is absolute and unconditional irrespective of:

- (i) any lack of validity or enforceability of any documents evidencing (or relating) to the Indebtedness;
- (ii) any change in the time, manner, place or amount of payment or in any other term of all or any of the Indebtedness, or any other amendment or waiver of or any consent to departure from the terms of the Indebtedness;
- (iii) any exchange, release or non-perfection of any collateral or lien securing all or any part of the Indebtedness, which exchange, release or non-perfection the Guarantor expressly agrees will not be deemed an unjustifiable impairment of the collateral;

- (iv) any release or amendment or waiver of or consent to departure from any other guaranty, for all or any part of the Indebtedness;
- (v) any settlement or compromise with any Borrower or any other person relating to the Indebtedness; or
- (vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, any Borrower in respect of the Indebtedness or the Guarantor in respect of this Guaranty.

This Guaranty will continue to be effective, or be reinstated, as the case may be, if at any time any of the Indebtedness is rescinded or must otherwise be returned by the City upon the insolvency or bankruptcy of any Borrower or otherwise, all as though such payment had not been made.

Section 3. Waiver. The Guarantor waives presentment, demand, diligence, notice of acceptance and any other notice with respect to any of the Indebtedness and/or this Guaranty and any requirement that the City exhaust any right or take any action against the Borrower or any other person or entity or any collateral.

Section 4. Subrogation, Reimbursement and Indemnity. Each Guarantor waives (a) all right to seek reimbursement or indemnity from the Borrower, and (b) any right to subrogation it may have or acquire as result of performance under this Guaranty.

Section 5. Representation and Warranties. Each Guarantor represents and warrants:

- (a) The execution and delivery of this Guaranty and the performance of its obligations under this Guaranty have been authorized by all necessary action.
- (b) No authorization, or registration with, any court or governmental department, commission, agency or instrumentality, is or will be necessary to the valid execution, delivery or performance of the Guaranty.
- (c) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms.
- (d) The Guarantor has made whatever inquiry into the financial or other affairs of the Borrower, and the terms of any Indebtedness, as it deems necessary or desirable prior to executing this Guaranty and has not relied on the City for any such information.
- (e) The Guarantor shall provide the City with any and all financial information and/or financial statements as requested by the City, including annual financial statements and manually signed copies of federal and state tax returns, which shall be satisfactory to the City.
- (f) The Guarantor agrees not to transfer any of its assets other than for full and adequate consideration, without the written consent of the City.

Section 6. Acceleration. The Guarantor agrees that, if the maturity of any of the Indebtedness is accelerated, by bankruptcy or otherwise, as against the Borrower, the maturity shall also be deemed accelerated for the purposes of this Guaranty, and without demand on or notice to the Guarantor.

Section 7. Amendments, etc. This Guaranty represents the entire agreement of the parties. No amendment or waiver of any provision nor consent to departure by the Guarantor from any provision is effective unless in writing and signed by the City, and then the waiver or consent will be effective only in the special instance and for the specific purpose given.

Section 8. Notices. All notices required or permitted under this Guaranty shall be given to the parties at the address stated in this Guaranty (or at any other address a party may designate in writing), sent by first class mail, postage prepaid, and is deemed complete upon mailing.

Section 9. No Waiver; Remedies. No failure on the part of the City to exercise, and no delay in exercising, any right under this Guaranty shall operate as a waiver of such right, nor shall any single or partial exercise of any right preclude any further exercise of such right or of any other right. All remedies provided in this Guaranty and in any document evidencing or relating to any Indebtedness are cumulative.

Section 10. Right of Set-off; Security Interest. On the occurrence and during the continuance of any default under the Indebtedness, the City is authorized at any time, without notice to the Guarantor to set off and apply to any unpaid Indebtedness: (a) any amounts which the City from time to time may owe the Guarantor, including any balance or share of any general or special deposit, certificate of deposit, savings certificates or other account (regardless of the source or intended use of any funds in such account), and (b) any other property, tangible or intangible, owned by or in which the Guarantor has an interest which may be in the possession or control of the City, in which accounts and other property the Guarantor grants the City a security interest. This right is in addition to and not in limitation of any other rights, including of set-off, which the City may have by law.

Section 11. Continuing Guaranty; Assignment. This Guaranty is a continuing guaranty and will: (a) remain in full force and effect until payment in full of the Indebtedness and all other amounts payable under this Guaranty, (b) extend to and cover every modification, waiver, extension or renewal of and every obligation accepted in substitution for, the Indebtedness, (c) be binding upon the Guarantor, his successors and assigns and; (d) inure to the benefit of and be enforceable by the City and its successors, transferees and assigns.

Section 12. Other Guarantors. The obligations of each Guarantor under this Guaranty shall be joint and several as to each other and all other guarantors of the Indebtedness. This Guaranty shall not be impaired or affected in any way as to the Guarantor by any termination, revocation, release, modification, discharge or substitution of collateral or changes as to any or all of the liabilities or undertakings of any other guarantor.

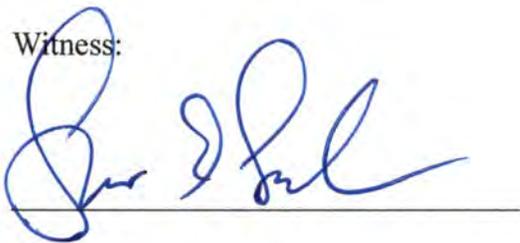
Section 13. Guaranty Not Modified By Bankruptcy. Neither the Guarantor's obligation in accordance with the terms of this Guaranty, nor any remedy for the enforcement, nor the amount of the Indebtedness of the Borrower will be impaired, modified, or limited in any manner whatsoever by any impairment, modification, discharge, limitation of the Indebtedness of the Borrower or its estate in bankruptcy or any remedy for the enforcement, resulting from the operation of any present or future provision of the Bankruptcy Code of the United States or other statute, or from the decision of any court interpreting any of the same, and each Guarantor is

obligated under this Guaranty. The amount of the Indebtedness will, for the purposes of this Guaranty, be determined as if no such impairment, stay, modification, discharge, or limitation had occurred.

Section 14. Governing Law. This Guaranty will be governed by, and construed in accordance with, the laws of the State of Texas. In the event the City brings any action hereunder in any court of record of Texas or the Federal Government, the Guarantor consents to and confers personal jurisdiction over the Guarantor by such court or courts and agrees that service of process may be made upon the Guarantor by mailing a copy of such process to the Guarantor.

Section 15. Waiver of Jury Trial. EACH GUARANTOR WAIVES TRIAL BY JURY IN ANY ACTION UNDER OR RELATING TO THIS GUARANTY AND TO THE INDEBTEDNESS OF THE BORROWER TO THE BANK.

Witness:



A handwritten signature in blue ink, appearing to be 'J. J. Sal', written over a horizontal line.

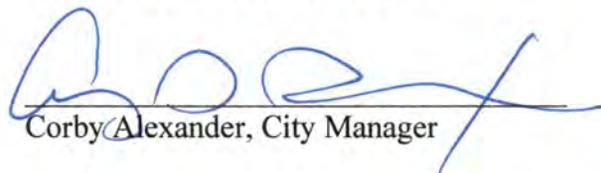
ROLAND YBARRA



A handwritten signature in blue ink, appearing to be 'R. Ybarra', written over a horizontal line.

Agreed to by:

CITY OF LA PORTE, TEXAS



A handwritten signature in blue ink, appearing to be 'Corby Alexander', written over a horizontal line.

Corby Alexander, City Manager

DEED WITHOUT WARRANTY

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: Dec 12, 2016

Grantor: City of La Porte, Texas, a municipal corporation

Mailing Address: 604 West Fairmont Parkway, La Porte, TX 77571

Grantee: Ybarra Restaurants, Inc., a Texas corporation

Mailing Address: 7529 Bayway Drive, Baytown, Texas 77520

Consideration: Ten and No/100 Dollars (\$10.00) cash
and other good and valuable considerations

Vendor's Lien Note: \$124,200.00

Further Consideration: The execution and delivery by the said Grantee of one certain amended promissory note of even date herewith in the principal sum shown above as Vendor's Lien Note, payable to the order of Grantor, bearing interest at the rate therein specified, providing for attorney's fees and acceleration of maturity at the rate and in the events therein set forth, and payment of said note being secured by Vendor's Lien and Superior Title retained herein in favor of said Grantor, and by amended and restated Deed of Trust of even date herewith, from Grantee to CLARK T. ASKINS, Trustee, to which reference is here made for all purposes; have GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto the said Grantee, the following described property, to-wit:

Property (including any improvements):

BEGINNING at a point located at the northwest corner of Block 708, Town of La Porte, said point being located on the east line of the North 25th Street Right-of-Way and the south line of the West Polk Street Right-of-Way;

THENCE in a westerly direction, along the projected south line of the West Polk Street Right-of-Way to its intersection with the center line of the North 25th Street Right-of-Way;

THENCE in a northerly direction along the projected center line of the North 25th Street Right-of-Way to its intersection with the north line of the West Polk St. Right-of-Way;

THENCE in an easterly direction, along the north line of the W of the North 25th Street Right-of-Way to its intersection with the east line of the North 25th Street Right-of-Way;

THENCE in a southerly direction, along the projected east line of the North 25th Street Right-of-Way to the POINT OF BEGINNING of the herein described tract, which was vacated, abandoned and closed by City of La Porte Ordinance No. 2016-3659 passed and approved by the City Council of the City of La Porte on the 12 day of Dec, 2016.

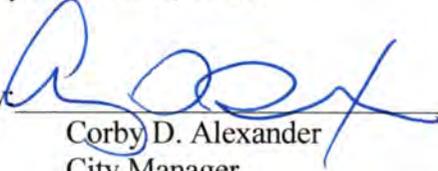
Reservations from and Exception to Conveyance and Warranty: This conveyance is made subject to all and singular the restrictions, conditions, oil, gas, and other mineral reservations, easements, and covenants, if any, applicable to and enforceable against the above described property as reflected by the records of the county clerk of the aforesaid county.

Grantor for the consideration and subject to the reservations from and exceptions to conveyance, conveys to Grantee the property without express or implied warranty, and all warranties that might arise by common law and the warranties in §5.023 of the Texas Property Code (or its successor) are excluded.

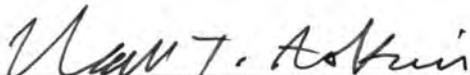
Attest:


Patrice Fogarty
City Secretary

City of La Porte, Texas

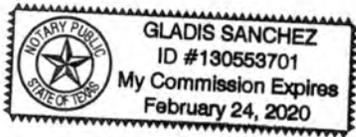
By 
Corby D. Alexander
City Manager

Approved:


Clark T. Askins
Assistant City Attorney

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on 12 day of December, 2016, by Corby D. Alexander, City Manager of the City of La Porte, Texas, a municipal corporation.



Gladis Sanchez

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

ASKINS & ASKINS, P.C.
P.O. Box 1218
La Porte, TX 77572-1218

PREPARED IN THE LAW OFFICE OF:

ASKINS & ASKINS, P.C.
P.O. Box 1218
La Porte, TX 77572-1218

AMENDED AND RESTATED REAL ESTATE LIEN NOTE

That certain Deed of Trust dated October 10, 2016 entered into between YBARRA RESTAURANTS, INC. and the CITY OF LA PORTE, TEXAS, is hereby amended and restated, as follows:

Date: DECEMBER 12, 2016

Maker: YBARRA RESTAURANTS, INC., a Texas corporation

Mailing Address: 7529 Bayway Drive, Baytown, Texas 77520

Payee: CITY OF LA PORTE, TEXAS, a municipal corporation

Place for Payment: 604 West Fairmont Parkway, La Porte, TX 77571

Principal Amount: ONE HUNDRED TWENTY FOUR THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$124,200.00)

Annual Interest Rate on Unpaid Principal from Date: 0%

Annual Interest Rate on Matured, Unpaid Amounts: 18%

Terms of Payment:

This Amended and Restated Real Estate Lien Note is delivered to Payee by Maker, to secure Maker's performance of the terms, conditions and covenants of that certain Chapter 380 Agreement for Waiver of Payment for Closure of Street Right-of-Way ("Agreement" herein) between Ybarra Restaurants, Inc., a Texas corporation (as Developer), and the City of La Porte, Texas, dated October 10, 2016, and Amended Chapter 380 Agreement for Waiver of Payment for Closure of Street Right-of-Way, dated December 12, 2016. This Amended and Restated Real Estate Lien Note shall be due and payable three (3) years from the effective date of October 10, 2016 under said original Agreement. In the event that Maker, as Developer under said Agreement, has performed each and every obligation under the Agreement by three (3) years from the effective date of said Agreement, the entire principal balance of this Real Estate Lien Note shall be forgiven and Maker's and Guarantor's obligations under this Real Estate Lien Note will be deemed discharged.

Security for Payment:

Vendor's Lien retained in Deed of even date herewith from YBARRA RESTAURANTS, INC. to CITY OF LA PORTE, TEXAS, and being additionally secured by Amended and Restated Deed of Trust of even date herewith to CLARK T. ASKINS, TRUSTEE, covering the tracts of land and property described therein, as well as adjacent property owned by Maker, to which Deed and Amended and Restated Deed of Trust and the record thereof reference is here made for further identity of the security for this note.

Maker promises to pay to the order of Payee at the place for payment and according to the terms of payment the principal amount plus interest at the rates stated above. All unpaid amounts shall be

due by the final scheduled payment date.

If Maker defaults in the payment of this note or in the performance of any obligation in any instrument securing or collateral to it, and the default continues after Payee gives Maker notice of the default and the time within which it must be cured, as may be required by law or by written agreement, then Payee may declare the unpaid principal balance and earned interest on this note immediately due. Maker and each surety, endorser, and guarantor waive all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, protests, and notices of protest, to the extent permitted by law.

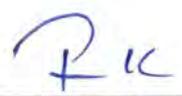
If this note or any instrument securing or collateral to it is given to an attorney for collection or enforcement, or if suit is brought for collection or enforcement, or if collected or enforced through probate, bankruptcy, or other judicial proceeding, then Maker shall pay Payee all costs of collection and enforcement, including reasonable attorney's fees and court costs, in addition to other amounts due. Reasonable attorney's fees shall be 10% of all amounts due unless either party pleads otherwise.

Interest on the debt evidenced by this note shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

When the context requires, singular nouns and pronouns include the plural.

YBARRA RESTAURANTS, INC.

BY: 
ROLAND YBARRA, President

BY: 
ROLAND YBARRA, Guarantor

12-12-16
Date

PREPARED IN THE LAW OFFICE OF:

ASKINS & ASKINS, P.C.
P.O. Box 1218
La Porte, TX 77572

AFTER RECORDING RETURN TO:
ASKINS & ASKINS, P.C.
P.O. Box 1218
La Porte, Texas 77571

PREPARED IN THE LAW OFFICE OF:
ASKINS & ASKINS, P.C.
P.O. Box 1218
La Porte, Texas 77571

AMENDED AND RESTATED DEED OF TRUST AND SECURITY AGREEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

That certain Deed of Trust dated October 10, 2016 entered into between YBARRA RESTAURANTS, INC. and the CITY OF LA PORTE, TEXAS, and recorded on October 18, 2016 under Harris County Clerk File No. PR-2016-470420, is hereby amended and restated, as follows:

Date: December 12, 2016
Grantor: YBARRA RESTAURANTS, INC.
Mailing Address: 7529 Bayway Drive, Baytown, Texas 77520
Trustee: CLARK T. ASKINS
Mailing Address: P.O. Box 1218, La Porte, Texas 77572
Beneficiary: CITY OF LA PORTE, TEXAS
Mailing Address: 604 West Fairmont Parkway, La Porte, TX 77571

Real Estate Lien Note:

Date: December 12, 2016
Amount: ONE HUNDRED TWENTY FOUR THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$124,200.00)
Maker: YBARRA RESTAURANTS, INC.
Payee: CITY OF LA PORTE, TEXAS

Property (including any improvements):

TRACT 1

Being a 2.403 acre tract of land out of the T.W. Lee Subdivision, Richard Pearsall

Survey, A625, Harris County, Texas, according to the survey performed by H. Carlos Smith, Engineers & Surveyors, Inc., on April 12 thru 13, 1984. The 2.403 acre tract is further described as being part of Lots 1 thru 10 and Lots 12 thru 20, all of Lots 21 thru 30, Block 707, including the alley contained therein and a portion of "A" Street; both the alley and street having been vacated, abandoned and closed on March 18, 1981, by the City of La Porte Ordinance No. 1252. The 2.403 acre tract of land is more particularly described by metes and bounds as follows:

Beginning at a 5/8 inch iron rod found for the Southeast corner of Block 698, T.W. Lee Subdivision, according to the plat recorded in Volume 67, Page 1, Harris County Deed Records, said corner being coincident with the West right-of-way line of 25th street (based on a width of 60.00 feet) and the North right-of-way line of "A" street (based on a width of 60.00 feet);

Thence South, passing at 60.00 feet the Northeast corner of Block 707 and being coincident with West right-of-way line of 25th street (based on a width of 60.00 feet) and the East boundary line of Block 707 for a total distance of 452.50 feet to a 5/8 inch iron rod found for the Southeast corner of the aforesaid 2.403 acre tract;

Thence West, coincident with the North right-of-way line of West Main Street (based on a width of 114.00 feet; original 85.00 feet) a distance of 221.00 feet to a 5/8 inch iron rod set for the Southwest corner of the aforesaid 2.403 acre tract;

Thence North, coincident with the East right-of-way line of Sens Road (26th street) (based on a width of 105.00 feet, original 60.00 feet) as widened and recorded under Harris County Film Code No. 176-97-1700; a distance of 100.00 feet to a 5/8 inch iron rod set for corner;

Thence N 4° 17' 21" W, coincident with East right-of-way line of Sens Road as widened, a distance of 353.49 feet to a 5/8 inch iron rod set for the Northwest corner of the aforesaid 2.403 acre tract, same corner being coincident with the North right-of-way line of "A" street as vacated, abandoned and closed by the City of La Porte Ordinance No. 1252 on March 8, 1981, and the South boundary line of Block 698;

Thence East, coincident with the North right-of-way line of "A" Street and the South boundary of Block 698, a distance of 247.44 feet to the POINT OF BEGINNING.

TRACT 2

Lots 1 through 30, Block 708, Town of La Porte, according to map or plat thereof recorded in Volume 67, Page 1, of the Map/Plat Records of Harris County, Texas SAVE AND EXCEPT that 7.5 foot strip of land conveyed to Harris County, Texas by deed recorded under Clerk's File No. D231169.

For value received and to secure payment of the note, and as required by Section 3.3 of the 380 Agreement for Waiver for Payment for Closure of Street Right-of-Way executed by Grantor, Grantor

conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. If Grantor performs all the covenants and pays the note according to its terms, or alternatively, if the Note is forgiven in accordance with the terms of the Note and said 380 Agreement for Waiver of Payment for Closure of Street Right-of-Way, this deed of trust shall have no further effect, and Beneficiary shall release it at Grantor's expense.

Grantor's Obligations

Grantor agrees to:

1. keep the property in good repair and condition;
2. pay all taxes and assessments on the property when due;
3. preserve the lien's priority as it is established in this deed of trust;
4. maintain, in a form acceptable to Beneficiary, an insurance policy that:
 - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
 - b. contains an 80% coinsurance clause;
 - c. provides fire and extended coverage, including windstorm coverage;
 - d. protects Beneficiary with a standard mortgage clause;
 - e. provides flood insurance at any time the property is in a flood hazard area; and
 - f. contains such other coverage as Beneficiary may reasonably require;
5. comply at all times with the requirements of the 80% coinsurance clause;
6. deliver the insurance policy to Beneficiary and deliver renewals to Beneficiary at least ten days before expiration;
7. keep any buildings occupied as required by the insurance policy; and
8. if this is not a first lien, pay all prior lien notes that Grantor is personally liable to pay and abide by all prior lien instruments.

Beneficiary's Rights

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
2. If the proceeds of the note are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid.
3. Beneficiary may apply any proceeds received under the insurance policy either to reduce the note or to repair or replace damaged or destroyed improvements covered by the policy.
4. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this deed of trust.
5. If Grantor defaults on the note or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, and the default continues after Beneficiary gives Grantor notice of the default and the time within which it must be cured, as may be required by law or by written agreement, then Beneficiary may:
 - a. declare the unpaid principal balance and earned interest on the note immediately due;
 - b. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then

amended; and

c. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the note.

Trustee's Duties

If requested by Beneficiary to foreclose this lien, Trustee shall:

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
2. sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty; and
3. from the proceeds of the sale, pay, in this order:
 - a. expenses of foreclosure, including a commission to Trustee of 5% of the bid;
 - b. to Beneficiary, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
 - c. any amounts required by law to be paid before payment to Grantor; and
 - d. to Grantor, any balance.

General Provisions

1. If any of the property is sold under this deed of trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.
5. If any portion of the note cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.
6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.
7. Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future rent and other income and receipts from the property. Leases are not assigned. Grantor warrants the validity and enforceability of the assignment. Grantor may as Beneficiary's licensee collect rent and other income and receipts as long as Grantor is not in default under the note or this deed of trust. Grantor will apply all rent and other income and receipts to payment of the note and performance of this deed of trust, but if the rent and other income and receipts exceed the amount due under the note and deed of trust, Grantor may retain the excess. If Grantor defaults in payment of the note or performance of this deed of trust, Beneficiary may terminate Grantor's license to collect and then as Grantor's agent may rent the property if it is vacant and collect all rent and other income and receipts. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the property. Beneficiary may exercise Beneficiary's rights and remedies under this paragraph without taking possession of the property. Beneficiary shall apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Grantor's obligations under the note and this deed of trust in the order determined by Beneficiary. Beneficiary is not required to act under this paragraph,

and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If Grantor becomes a voluntary or involuntary bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law.

8. Interest on the debt secured by this deed of trust shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

9. When the context requires, singular nouns and pronouns include the plural.

10. The term "note" includes all sums secured by this deed of trust.

11. This deed of trust shall bind, inure, to the benefit of, and be exercised by successors in interest of all parties.

12. If Grantor and Maker are not the same person, the term "Grantor" shall include Maker.

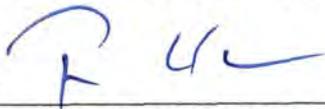
13. If Grantor transfers any part of the property without Beneficiary's prior written consent, Beneficiary may declare the debt secured by this deed of trust immediately payable. In that event Beneficiary will notify Grantor that the debt is payable; if it is not paid within thirty days after notice to Grantor, Beneficiary may without further notice of demand to Grantor invoke any remedies provided in this instrument for default. Exceptions to this provision for declaring the note due on sale or transfer are limited to the following:

- a. creation of a lien or encumbrance subordinate to this deed of trust;
- b. creation of a purchase-money security interest for household appliances;
- c. transfer by devise, descent, or operation of law on the death of a joint tenant; and
- d. grant of a leasehold interest of three years or less without an option to purchase.

14. Grantor represents that this deed of trust and the note are given for the following purposes: The indebtedness, the payment of which is hereby secured, is in part payment of the purchase price of the real property herein described, and is also secured by a vendor's lien thereon retained in Deed of even date herewith to the undersigned, and this Deed of Trust is given as additional security for the payment of said indebtedness.

EXECUTED December 12, 2016.

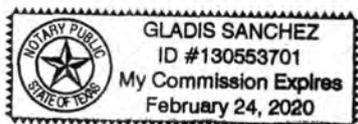
YBARRA RESTAURANTS, INC.

BY: 
ROLAND YBARRA, President

STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on December 12, 2016, by ROLAND YBARRA, President of YBARRA RESTAURANTS, INC .




Notary Public, State of Texas

SUBORDINATION AGREEMENT

THE STATE OF TEXAS

COUNTY OF HARRIS

WHEREAS, **YBARRA RESTAURANTS, INC.**, a Texas corporation, **EL T - LA PORTE, INC.**, a Texas corporation and **WOLFGANG DOMINIQUE, INC.**, a Texas corporation (hereinafter called "Borrower"), for the purpose of securing a loan from **CENTRAL BANK** (hereinafter called "Lender"), has executed its one certain promissory note in the principal sum of **FIVE MILLION EIGHT HUNDRED FIFTY-NINE THOUSAND AND NO/100 DOLLARS (\$5,859,000.00)**, (herein called the "New Note") bearing interest as therein specified and payable to the order of Lender as therein provided; said New Note providing for acceleration of maturity in the event of default and for attorney's fees, and for the purpose of securing said New Note has executed a Deed of Trust upon the following described real property in **Harris County, Texas**, to-wit:

TRACT ONE: Being a 2.403 acre tract of land out of the T. W. Lee Subdivision, Richard Pearsall Survey, A-625, Harris County, Texas, according to the survey performed by H. Carlos Smith, Engineers & Surveyors, Inc., on April 12 thru 13, 1984. The 2.403 acre tract is further described as being part of Lots 1 thru 10 and Lots 12 thru 20, all of Lots 21 thru 30, Block 707, including the alley contained therein and a portion of "A" street; both the alley and street having been vacated, abandoned and closed on March 18, 1981, by the City of La Porte Ordinance No. 1252, said 2.403 acre tract of land being more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof for any and all purposes; and

TRACT TWO: Lots 1 thru 30, Block 708, Town of La Porte, according to map or plat thereof recorded in Volume 67, Page 1, of the Map Records of Harris County, Texas, **SAVE AND EXCEPT** that 7.5 foot strip of land conveyed to Harris County, Texas by deed recorded under Clerk's File No. D231169.

WHEREAS, the undersigned, **CITY OF LA PORTE, TEXAS**, (hereinafter called "Second Lien Noteholder"), holds a Promissory Note described as follows:

Promissory Note dated October 10, 2016, in the original principal sum of \$116,100.00 executed by Ybarra Restaurants, Inc., payable to the order of City of La Porte, Texas, secured by a Deed of Trust recorded under County Clerk's File No. RP-2016-470420; said instrument being amended and restated by Amended and Restated Deed of Trust and Security Agreement referencing a Promissory Note dated December 12, 2016, in the original principal sum of \$\$124,200.00 executed by Ybarra Restaurants, Inc. recorded under County Clerk's File No. RP-2016-563880; all in the Official Public Records of Real Property Records of Harris County, Texas, and covering the above described property; (herein called the "Second Lien Note"); and

WHEREAS, Lender will not close said loan and advance the funds thereof and accept said New Note and Deed of Trust unless and until the undersigned expressly subordinates all of its rights and liens securing the above referenced Second Lien Note to said New Note and the Deed of Trust securing the payment thereof.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT the undersigned Second Lien Noteholder, for valuable consideration paid and in order to induce Lender to close said loan represented by said New Note and Deed of Trust referenced above and to advance to Borrower the funds evidenced by said New Note and accept said New Note and Deed of Trust, expressly agrees that said Second Lien Note and all of the instruments securing the payment thereof, and the undersigned's rights thereunder shall be and remain and are hereby expressly made SUBORDINATE AND INFERIOR to said Deed of Trust securing the payment of said New Note, and which said Second Lien Note shall continue to be subject to the New Note. The undersigned Second Lien Noteholder further agrees that said New

Note and the liens securing the payment of the same shall be and shall remain **PRIOR AND SUPERIOR** to said Second Lien Note and all rights of the undersigned thereunder regardless of how often or in what manner said New Note, together with the lien or liens securing the same, may be renewed, extended, changed, or altered.

EXECUTED this the _____ day of August, 2018.

CITY OF LA PORTE, TEXAS

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS

COUNTY OF _____

This instrument was acknowledged before me on this the _____ day of August, 2018 by _____ as _____ of the **CITY OF LA PORTE, TEXAS**, on behalf of said entity.

NOTARY PUBLIC, STATE OF TEXAS

After Recording, Return to:

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: <u>September 10, 2018</u>
Requested By: <u>Cherell Daeumer</u>
Department: <u>Finance/Purchasing</u>
Report: <input checked="" type="checkbox"/> Resolution: <input type="checkbox"/> Ordinance: <input type="checkbox"/>

<u>Budget</u>
Source of Funds: _____
Account Number: _____
Amount Budgeted: _____
Amount Requested: _____
Budgeted Item: YES NO

Exhibits: _____

Exhibits: _____

Exhibits: _____

SUMMARY & RECOMMENDATION

Background:

Bid #18021 for Automotive Parts was opened and read on July 24, 2018; bids were received by XL Auto Parts and Allen and Kerber Auto Supply. One bidder did not submit pricing on the city's required Pricing Sheet so they were deemed non-responsive. The other bidder did not complete all sections of the pricing sheet. Also, staff discovered after the bid opening the term of the contract was not included in the bid documents.

Staff's recommendation is to reject all bids and re-bid at a later date.

Action Required by Council:

Consider approval or other action to reject all bids for Bid# 18021 for Automotive Parts.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: September 10, 2018

Requested By: Don Pennell

Department: Public Works

Report: x Resolution: _____ Ordinance: _____

Budget

Source of Funds: 003

Account Number: 003-7085-533-5110

Amount Budgeted: \$200,680

Amount Requested: \$156,447

Budgeted Item: Yes

Exhibit: Bid Tabulation

Exhibit: Vendor Access Report

Exhibit: Letter of Recommendation

Exhibit: References for G&A Directional

Exhibit: Project Location Map

SUMMARY & RECOMMENDATION

Advertised, sealed Bid # 18023 Bayshore Park Waterline Relocation Re-bid was opened and read on July 17, 2018. Bid requests were advertised in the Bay Area Observer, posted on the City of La Porte website site and Public Purchase with four (4) contractors returning bids. G&A Directional Boring Inc. submitted the lowest bid in the amount of \$130,372. The potential for unforeseen challenges exists with re-routing the customer service lines to the new meter locations in front of the properties; therefore, staff recommends a project contingency of 20%.

Project Benefits, Liabilities, and Operating Cost:

Benefits:

- Elimination of the aging water main will reduce leaks, resulting in increased reliability of the water system. The proposed project also provides increased water main size, attributing to increased fire flow in the immediate area. Relocation to the front of the properties will aid in access for future meter and water main maintenance.

Liabilities of Maintaining the Status Quo:

- The occurrence of water main leaks will likely increase if work is deferred for an extended period of time.

Operating Costs:

- Operating costs will not be affected.

Action Required of City Council:

Consider approval or other action authorizing the City Manager to execute a contract with G&A Directional Boring Inc. for Bayshore Park Waterline Relocation in the amount of \$130,372, plus a project contingency of \$26,075, for a total authorization of \$156,447.

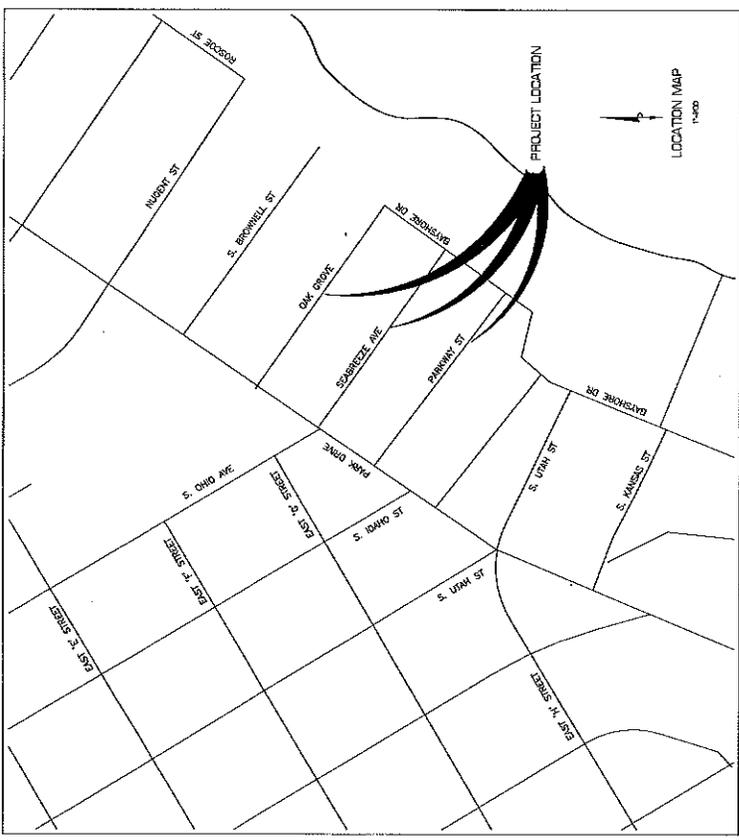
Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

GENERAL CONSTRUCTION NOTES

1. MATERIALS FOR WATERMETER SHALL BE AS FOLLOWS:
 - A. MAIN: APPROX. 1/2" DIA. WITH INTERNAL REPTURNED JOINT FOR INSTALLATION BY DIRECTIONAL DRILL. PIPE TO BE CERTAINTED CERT-A-LOK CHOUER OR PRIOR APPROVED EQUAL.
2. SERVICE LINES: HIGH DENSITY POLYETHYLENE (HDPE) 3/4" - COPPER TUBING SIZE.
3. INSTALLATION: THE CONTRACTOR TO CONSIDER EXISTING UTILITIES, AND MAKE ADJUSTMENT IN VERTICAL AND HORIZONTAL ALIGNMENT GIVEN CONSIDERATION OF THE FOLLOWING:
 - A. THE MAJORITY OF THE PIPE TO BE INSTALLED BY DIRECTIONAL DRILL. DEPTH OF PIPE INSTALLED BY DIRECTIONAL DRILL SHALL BE 18" BELOW FINISH GRADE AT POINT OF INSTALLATION OR 24" DEEPER BELOW THE SURFACE. MINIMUM COVER OF 36" TO BE MAINTAINED.
 - B. CONTRACTOR TO LOCATE THE EXISTING CROSSING MAIN LINES AND ADJUST ALIGNMENT TO ALLOW FOR CONNECTION. PROVIDE PROTECTIVE SHAFT, TRENCH BOX, AND/OR OTHER MEASURES WITH JOINT REFRANIT (MEALING OR EQUAL).
4. CONNECTION: WATERMETER SERVICE TO BE MADE FROM MAIN LINES WITH JOINT REFRANIT (MEALING OR EQUAL). CONNECTION TO BE MADE BY CONNECTION CALL OUT AND INCLUDE SETTING ALIGNMENT AND ELEVATION OF WATERLINE AT POINT OF CONNECTION. CONTRACTOR SHALL PROVIDE ALL WORK ASSOCIATED WITH CONNECTION. IF REQUIRED, PROVIDE VERTICAL OFFSET TO BE MADE BY OTHER TRADES.
5. SERVICES: SERVICES INCLUDE LINE FROM METER TO THE HOUSE AND FROM THE MAIN LINE TO THE METER. ALL MATERIAL TO CONFORM TO NSF STANDARD 31 AND STANCHARD 31 FOR POTABLE WATER USE.
 - A. METER TO HOUSE: CONTRACTOR TO PROVIDE SERVICES ON LICENSED PLUMBERS FOR INSTALLATION OF NEW SERVICE LINES FROM THE METER TO THE HOUSE. PLUMBER TO FILE PERMIT WITH CITY. PIPES WILL BE MADE FOR PERMITS. PRELIMINARY ROUTINGS OF THE LINES ARE PROVIDED. FINAL ALIGNMENT TO BE CONFIRMED BY PLUMBER WITH THE PROPERTY OWNER PRIOR TO INSTALLATION. PIPE TO BE 2-INCH SCHEDULE 40 PVC (IRON PIPE SIZE) CONFORMING TO ASTM D2733. TRENCHES TO BE BACKFILLED AND COMPACTED. REUSE EXISTING SOOT THAT HAS BEEN REMOVED FROM EXISTING TRENCHES. CONTRACTOR SHALL PROVIDE A REPLACEMENT METERS FOR DAMAGED WATER METER. EXISTING LINES AT FEAR METER AND COVER AND FILL HOLES. TESTING AND STABILIZATION TO CONFORM TO CITY BUILDING CODES.
 - B. MAIN LINE TO METER: SERVICE LINES FROM THE MAIN WATER MAIN TO THE METER SERVICE IS A 3/4" - COPPER OR PVC COMPARED TO AVAILABLE. LINES UNLESS THE BACKFILL TO BE USED. LINES TO BE INSTALLED BY CONTRACTOR PRIOR TO MECHANICAL TESTING AND PRIOR TO METER RELOCATION BY SUCCESSFUL PLUMBER.
6. FINAL DISPOSE: BACKFILLED TRENCHES TO BE COMPACTED, LEVELLED WITH TOP SOIL, AND COVERED WITH BLOCK CODDING (12" x 6" x 6").
7. CONTRACTOR TO PROVIDE FOR NOTIFICATION OF STORMWATER DISCHARGE UNDER CONSTRUCTION GENERAL PERMIT (TXL00000) IF MORE THAN 1/4" OF AREA IS DISTURBED. CONTRACTOR SHALL FOLLOW GOOD PRACTICE TO PREVENT SOIL RUNOFF OF FERTILIZERS, TRACEABLE AND OTHER SIMILAR CONDITIONS.



- P&P PROP LEGEND**
- WATER LINE
 - SANITARY SEWER
 - OVERHEAD UTILITY
 - UNDERGROUND TELEPHONE
 - UNDERGROUND GAS
 - WATER LINE
 - ASPHALT
 - CULVERT
 - TOP OF BANK
 - WOOD FENCE
 - CHAIN LINK FENCE
 - PIRE HYDRANT
 - PAVER POLE
 - PAVER BOX
 - TREE
 - SOIL
 - WATER VALVE
 - WATER METER

- EXIST LEGEND**
- RIGHT OF WAY/PROPERTY LINE
 - SANITARY SEWER
 - OVERHEAD UTILITY
 - UNDERGROUND TELEPHONE
 - UNDERGROUND GAS
 - WATER LINE
 - ASPHALT
 - CULVERT
 - TOP OF BANK
 - WOOD FENCE
 - CHAIN LINK FENCE
 - PIRE HYDRANT
 - PAVER POLE
 - PAVER BOX
 - TREE
 - SOIL
 - WATER VALVE
 - WATER METER



SPJ
SCHWALMURS & ROLK, P.C.
ENGINEERS, ARCHITECTS, INTERIOR DESIGNERS
11000 Katy Freeway, Suite 1000
Houston, Texas 77058
Tel: 281.462.1000
www.spj.com

**CITY OF LA PORTE
TEXAS**

**BAYSHORE PARK
WATERLINE RELOCATION**

**GENERAL CONSTRUCTION
NOTES &
LOCATION MAP**



DESIGNED BY: [Name]
DRAWN BY: [Name]
PROJECT NUMBER: 201022.00
SCALE: NONE
DATE: MARCH 2018



DESIGNED BY: [Name]
DRAWN BY: [Name]
PROJECT NUMBER: 201022.00
SCALE: NONE
DATE: MARCH 2018



**City of La Porte
Reference Check Form**

Vendor Name: G & A Boring Direccional

1. How long have you used this particular vendor for waterline projects? 2 years
2. How many different projects has this vendor been used on in this capacity? 2 projects
3. On a scale of one to ten, with ten being completely satisfied and one being completely unsatisfied, how would you rate the following:
 - a. Overall quality of waterline project 8
 - b. Overall reliability 8
 - c. Overall vendor ability to meet timelines or deadlines 8
 - d. Overall quality of vendor deliverables 8
 - e. Overall vendor personnel experience level 7
4. On a scale of one to ten, with ten being excellent and one being unsatisfactory, how would you rate the following:
 - a. The company's attitude toward customer service? 9
 - b. The company's ability to resolve problems? 8
 - c. The company's overall performance? 8
5. On a scale of one to ten, with ten being "absolutely would" and one being "absolutely would not", would you recommend this vendor to someone? 8
6. In your opinion, what are the vendor's
 - a. Strengths? Follows directions well, works well with cities, easy to communicate with
 - b. Weaknesses? _____
 - c. Additional Comments? Occasionally have malfunctioning equipment, but brought working equipment out in reasonable time

Signature: Cole Caraway

Company: KSA



**City of La Porte
Reference Check Form**

Vendor Name: G & A Boring Direccional

1. How long have you used this particular vendor for waterline projects? 1 year
2. How many different projects has this vendor been used on in this capacity? 1 project
3. On a scale of one to ten, with ten being completely satisfied and one being completely unsatisfied, how would you rate the following:
 - a. Overall quality of waterline project 8
 - b. Overall reliability 8
 - c. Overall vendor ability to meet timelines or deadlines 8
 - d. Overall quality of vendor deliverables 8
 - e. Overall vendor personnel experience level 8
4. On a scale of one to ten, with ten being excellent and one being unsatisfactory, how would you rate the following:
 - a. The company's attitude toward customer service? 10
 - b. The company's ability to resolve problems? 10
 - c. The company's overall performance? 9
5. On a scale of one to ten, with ten being "absolutely would" and one being "absolutely would not", would you recommend this vendor to someone? 8
6. In your opinion, what are the vendor's
 - a. Strengths? Follow up, transparency
 - b. Weaknesses? Construction foresight
 - c. Additional Comments? We have had an overall positive experience.
They were willing to work with us to resolve issues
and only requested change orders when absolutely needed.

Signature: 

Company: Julia Horie - Costello, Inc.



**City of La Porte
Reference Check Form**

Vendor Name: G & A Boring Direccional

1. How long have you used this particular vendor for waterline projects? ___1yr___
2. How many different projects has this vendor been used on in this capacity? ___several___
3. On a scale of one to ten, with ten being completely satisfied and one being completely unsatisfied, how would you rate the following:
 - a. Overall quality of waterline project ___9___
 - b. Overall reliability ___9___
 - c. Overall vendor ability to meet timelines or deadlines ___9___
 - d. Overall quality of vendor deliverables ___9___
 - e. Overall vendor personnel experience level ___9___
4. On a scale of one to ten, with ten being excellent and one being unsatisfactory, how would you rate the following:
 - a. The company's attitude toward customer service? ___9___
 - b. The company's ability to resolve problems? ___9___
 - c. The company's overall performance? ___9___
5. On a scale of one to ten, with ten being "absolutely would" and one being "absolutely would not", would you recommend this vendor to someone? ___9___
6. In your opinion, what are the vendor's
 - a. Strengths? _____
 - b. Weaknesses? _____
 - c. Additional Comments? _____

Signature: David D

Company: Jacobs Engineering

August 9, 2018

City of La Porte, Texas
604 W. Fairmont Parkway
La Porte, Texas 77571

Attn: Mr. Ray Mayo

Re: Bayshore Park Waterline Relocation
Recommendation of Award

Gentlemen,

Enclosed is a tabulation of the four bids received on the above project. We recommend award to G&A Boring, Inc. based on the lowest responsive, responsible bid of \$130,372.00.

Sincerely,



Ricky Bourque, P.E.
Vice President

Access Report

Agency

City of La Porte (TX)

Bid Number

18023

Bid Title

Bayshore Park Waterline Relocation Rebid

Vendor Name	Accessed First Time	Documents
G&A Boring	2018-07-03 07:44 AM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
Hammer & Steel	2018-06-29 07:10 AM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
Angel Brothers Enterprises, Ltc	2018-06-28 02:25 PM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
TCH Directional Drilling	2018-06-29 08:27 AM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
North America Procurement Cc	2018-06-29 01:54 AM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
Onvia	2018-06-28 01:01 PM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
Perkens WS Corporation	2018-07-02 03:26 AM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
AR TurnKee Construction Com	2018-07-16 09:22 AM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
Dale Dobbins	2018-07-01 08:54 PM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
F&L Coatings and Concrete, LI	2018-07-10 12:52 PM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
Webtech	2018-06-29 02:44 AM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
Horseshoe Construction, Inc	2018-06-28 05:57 PM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
LJA Engineering	2018-07-02 12:43 PM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
R. L. Utilities	2018-06-29 09:11 AM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
Dodge Data & Analytics	2018-06-28 07:27 PM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
CMD	2018-07-02 07:42 AM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
SmartProcure	2018-06-28 11:27 PM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
L&L Supplies	2018-06-29 09:02 AM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
Advanced Starlight Internationa	2018-07-06 07:02 AM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf
RAC Industries, LLC	2018-06-28 01:34 PM CDT	Bid 18023 Bayshore Park Waterline Relocation Re-bid.pdf

**CITY OF LA PORTE, TEXAS
BAYSHORE PARK WATERLINE RELOCATION**

BID OPENING DATE: 1/07/17/18 AT 2:00PM

Item	Qty	Unit	Description	G&A Boring, 10414 Peach St, Houston, TX 77093		R&A Road Boring, 11450 Hirsch Rd, Houston, TX 77016		Horseshoe Construction, 2309 S. Battleground Rd, La Porte, TX 77571		AR Turnkey, P.O. Box 925985, Houston, TX 77292	
				Unit Price	Item Total	Unit Price	Item Total	Unit Price	Item Total	Unit Price	Item Total
1.	1	LS	Mobilization costs, including payment bond, performance bond, insurance, & moving equipment to project, all in strict accordance with plans & specifications; NOT TO EXCEED 5% OF TOTAL PROJECT BID for.	\$6,518.00	\$6,518.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$15,000.00	\$15,000.00
2.	1.382	LF	6" PVC, AWWA C-900 DR14 Restrained Joint, waterline furnished and installed by directional drill and open excavation, complete in place all depths including all cement lined ductile iron fittings with adapter gaskets, sterilization, and pressure testing, and detection wire, all in strict accordance with plans and specifications for.	\$38.00	\$52,516.00	\$77.00	\$106,414.00	\$76.00	\$105,032.00	\$117.00	\$161,694.00
3.	16	EA	Short Side Service (1" water service tap and line), complete in place including tapping saddle, corporation stop, curb stop and all necessary fittings, excavation, backfill, surface restoration, testing and sterilization, all in strict accordance with the plans and specifications for.	\$900.00	\$14,400.00	\$750.00	\$12,000.00	\$975.00	\$15,600.00	\$850.00	\$13,600.00
4.	8	EA	Far Side Service (1" water service tap and line), complete in place including tapping saddle, corporation stop, curb stop and all necessary fittings, excavation, backfill, surface restoration, testing and sterilization, all in strict accordance with the plans and specifications for.	\$1,200.00	\$9,600.00	\$1,000.00	\$8,000.00	\$1,250.00	\$10,000.00	\$1,400.00	\$11,200.00
5.	2.471	LF	1" house water service line, (SCH 40) PVC per general routing, complete in place including all excavation, backfill, surface restoration, testing and sterilization, all in strict accordance with plans and specifications for.	\$8.00	\$19,768.00	\$10.00	\$24,710.00	\$22.00	\$54,362.00	\$27.00	\$66,717.00
6.	1	EA	Waterline Connection A, including tapping, sleeve and valve, setting proposed waterline alignment for connection, fittings, all in strict accordance with plans and specifications for.	\$3,500.00	\$3,500.00	\$5,000.00	\$5,000.00	\$7,500.00	\$7,500.00	\$6,000.00	\$6,000.00
7.	1	EA	Waterline Connection B, including tapping, sleeve and valve, setting proposed waterline alignment for connection, fittings, all in strict accordance with plans and specifications for.	\$3,000.00	\$3,000.00	\$5,000.00	\$5,000.00	\$7,500.00	\$7,500.00	\$5,000.00	\$5,000.00
8.	1	EA	Waterline Connection C, including tapping, sleeve and valve, setting proposed waterline alignment for connection, fittings, all in strict accordance with plans and specifications for.	\$3,500.00	\$3,500.00	\$5,000.00	\$5,000.00	\$7,500.00	\$7,500.00	\$6,000.00	\$6,000.00
9.	1	EA	Waterline Connection D, including tapping, sleeve and valve, setting proposed waterline alignment for connection, fittings, all in strict accordance with plans and specifications for.	\$3,000.00	\$3,000.00	\$5,000.00	\$5,000.00	\$7,500.00	\$7,500.00	\$5,000.00	\$5,000.00
10.	2	EA	Fire Hydrant Assembly, complete and operable, furnished and installed including all materials as detailed (including 6" gate valve), testing and sterilization, all in strict accordance with plans and specifications for.	\$3,000.00	\$6,000.00	\$8,000.00	\$16,000.00	\$6,800.00	\$13,600.00	\$4,000.00	\$8,000.00
11.	24	EA	Connection to Water Meters, including relocation of existing meter connection of new line, return of old fittings to Owner and cutting of old lines, and surface restoration, all in strict accordance with plans and specifications for.	\$130.00	\$3,120.00	\$1,000.00	\$24,000.00	\$500.00	\$12,000.00	\$750.00	\$18,000.00
12.	4	EA	Vertical or Horizontal Offset, as needed for avoiding conflicts, all in strict accordance with plans and specifications for.	\$500.00	\$2,000.00	\$1,000.00	\$4,000.00	\$2,725.00	\$10,900.00	\$2,000.00	\$8,000.00
13.	3	EA	Cut, Plug, and Abandon in Place Existing Waterline, all in strict accordance with the plans and specifications for.	\$1,100.00	\$3,300.00	\$500.00	\$1,500.00	\$1,025.00	\$3,075.00	\$700.00	\$2,100.00
14.	50	LF	Trench Safety for depths greater than 5 ft, all in strict accordance with the plans and specifications for.	\$3.00	\$150.00	\$0.50	\$25.00	\$1.00	\$50.00	\$1.00	\$50.00
TOTAL					\$130,372.00		\$226,649.00		\$264,619.00		\$326,361.00
Bid Form				X		X		X		X	
Bid Bond				X		?		X		X	
Respondent Affidavit				X		X		X		X	
Certification of Respondent				X		X		X		X	
Protection of Resident Workers Compliance				X		X		X		X	
Indemnity Hold Harmless Agreement				X		X		X		X	
Conflict of Interest Questionnaire				X		X		X		X	
References				X		X		X		X	
Qualifications				X		X		X		X	
Equipment Available				X		X		X		X	
House Bill 89 Verification				X		X		X		X	
Form 1295				X		X		X		X	
Power of Attorney				X		X		X		X	

The Bid Proposals submitted have been reviewed, and to the best of my knowledge this is an accurate tabulation of the

Signature

Ruby J. Bury

Date

8/9/18



REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: <u>September 10, 2018</u>
Requested By: <u>Alex Osmond</u>
Department: <u>Administration</u>
Report: Resolution: Ordinance:

<u>Budget</u>	
Source of Funds:	<u>2018-19 Budget</u>
Account Number:	<u>001.6048.551.2090</u>
Amount Budgeted:	<u>\$60,000</u>
Amount Requested:	<u>\$55,688.78</u>
Budgeted Item:	YES

Exhibits: Bid Tabulation

Exhibits: _____

SUMMARY & RECOMMENDATION

Recently, the Bay Forest Golf Course staff field tested three (3) types of 2019 golf carts. The manufacturers tested were: Yamaha, EZGO, and Club Car. These known brands were selected for the test because they are currently available through Council approved cooperatives/buy-boards.

The low bidders were Yamaha and EZGO, with equal bid amounts of \$214,600.00 for one-time payment. Yamaha was the lowest bidder for a four (4) year payment plan amount of \$55,688.70 and total charges of \$222,754.80, which included finance charges.

The field testing of the golf carts resulted in the 2019 Yamaha model (48V with chargers and accessories) being the preferred cart.

In addition to the field test conducted by Staff, other factors contributing to the Yamaha car being favored include:

- Overall performance experience with the brand in service for the last 12 years. In fact, the 2019 model shows improvement over the 2015 model (currently in operation)
- Yamaha Services/Maintenance Program exceeds the others, including not just regionalized mobile service capability as offered by others, but a local mobile and shop services capability from a known provider.
- 2019 Yamaha car includes on-board towing system that has been recommended for use by other courses in the area that have them in operation
- Four-year purchase payment plan is the most favorable and is within budget
- Best offer of trade-in allowance
- Yamaha will finance the purchase to allow four annual payments at 4.52% interest
- All extra parts and accessories requested are included in the pricing
- Satisfactory warranty terms
- The 2019 Yamaha car is available on BuyBoard Contract 529-17.

Staff recommends replacing the seventy four (74) 2015 carts currently in operation with the purchase of the 2019 Yamaha model golf carts utilizing BuyBoard Contract 529-17. Payment for these new carts

could occur by the annual payment amount over four (4) fiscal years beginning October 1, 2018 of \$55,688.70 or a one-time payment of \$214,600.00, which would save the City in finance charges. If Council decided to move forward with one-time payment option in order to save money on the financing charges, annual lease fees could be set-up in FY2018-19 or the following year to begin saving for the future replacement of the 2019 carts. This option would require an increase in the current proposed budget to the golf course of \$214,600 if the Council wished to begin the saving for future replacement in FY19 or an increase of \$154,600 in FY19 with annual lease fee payments to be discussed in next year's budget process.

Action Required by Council:

Consider approval or other action replacing the seventy four (74) 2015 cars currently in operation with the purchase of the 2019 Yamaha model golf cars utilizing BuyBoard Contract 529-17.

Approved for City Council Agenda

Corby Alexander, City Manager

Date

Tabulation to Golf Car Quotes

Item No.	Description	QTY	Yamaha		EZGO/Textron		Club Car, LLC	
			Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
1	2019 48 Volt cars with chargers, as specified	74	4450	329300	4300	318200	4522.42	334659.08
	Towing: State Onboard or Offboard		on board towing		not stated		off board towing	
2	Trade-In Allowance on 2015 Yamaha cars with Chargers	74	1550	114700	1400	103600	1400	103600
	<u>Subtotal</u>			\$214,600.00		\$214,600.00		\$231,059.08
3	Finance Rate		4.52%		not stated		4.47%	
	Annual Installment	4	55688.7		\$57,746.00		**	

	Net/Per Car	\$2,900.00		\$2,900.00		\$3,122.42	
	(after trade-in, less interest)					**	
	Payment Amounts:	2018	55688.7	2018	57746	2018	61607.28
		2019	55688.7	2019	57746	2019	54032.77
		2020	55688.7	2020	57746	2020	56448.04
		2021	55688.7	2021	57746	2021	58971.26
							231059.35
	Financed Amount(after interest paid)		\$222,754.80		\$230,984.00		\$246,429.12
	Interest		\$8,154.80		\$16,384.00		\$15,370.04

**

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested <u>September 10, 2018</u>
Requested By: <u>Corby Alexander</u>
Department: <u>Administration</u>
Report <u> </u> Resolution: <u> </u> Ordinance: <u> </u>

<u>Appropriation</u>
Source of Funds: <u>N/A</u>
Account Number: <u>N/A</u>
Amount Budgeted: <u>N/A</u>
Amount Requested: <u>N/A</u>
Budgeted Item: YES NO

Exhibit: 2018 Interlocal Agreement – Redline & Final
Exhibit: 2015 Interlocal Agreement

SUMMARY & RECOMMENDATION

Currently, the City of La Porte provides municipal court services to the City of Morgan’s Point, which expire on September 30, 2018. Representatives from the City of Morgan’s Point wish to continue utilizing the City of La Porte municipal court services; therefore, they’ve requested the City of La Porte enter into a new interlocal agreement with them for these services. The proposed Interlocal Agreement – Municipal Court is for a term of five (5) fiscal years, commencing on October 1, 2018. The proposed fee for the first fiscal year is \$43,500 for the first 600 citations processed through La Porte Municipal Court and \$72 per citation processed above 600. The agreement includes an annual escalation fee increase of three percent (3%) after the first fiscal year.

Under the proposed agreement, the City of La Porte would provide municipal court clerical services and provide facilities for the Morgan’s Point judge and prosecutor to prepare for and hold court. The clerical services would include assisting defendants, issuing and clearing warrants, receiving and depositing payments, maintaining court records, submitting monthly and quarterly reports to the state, creating court dockets, and issuing jury summons. The City of Morgan’s Point would provide whatever Ordinances may be necessary to give City of La Porte the full authority, power, and privileges to act for City of Morgan’s Point in accordance with the interlocal agreement and appoint/provide for judicial, prosecutorial and bailiff personnel.

A copy of the proposed Interlocal Agreement – Court is attached. A representative from the City of Morgan’s Point will be available to answer any questions concerning the agreement.

Action Required by Council:

Consider approval or other action authorizing the Mayor to execute an Interlocal Agreement with the City of Morgan’s Point to provide Municipal Court Services for the period of October 1, 2018 to September 30, 2023.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

THE STATE OF TEXAS
COUNTY OF HARRIS

§
§ INTERLOCAL AGREEMENT—MUNICIPAL COURT
§

Whereas, the City of La Porte, Texas, and the City of Morgan's Point, Texas are adjacent to one another, and City of Morgan's Point finds that efficiency of city services will be better served by the use of City of La Porte's facilities for municipal court services; and

Whereas, the parties enter into this Agreement for the purpose of providing municipal court services for the benefit of their communities;

Now, therefore, the City Councils of the City of La Porte and the City of Morgan's Point mutually agree as follows:

I.

City of La Porte and City of Morgan's Point enter into this Agreement by and through their duly elected officials, and it is the intention of both parties to conform this Agreement in all respects with Chapter 791 of the Texas Government Code, more commonly known as "The Interlocal Cooperation Act."

II.

City of La Porte shall:

(a) Provide municipal court clerical services. This includes collecting and receipting fines and court costs, filing Office of Court Administration Reports, filing State Comptroller's Office reports, preparing reports of moving traffic convictions to the Department of Public Safety and all other reasonable and necessary functions of a municipal court. City of La Porte shall collect fines and costs in connection with citations issued by the City of Morgan's Point, process citations in the dedicated court software; answer questions from defendants, enter and clear warrants and cases in SETCIC, Incode and OMNI; and perform other municipal court duties as required in the normal course of business.

(b) Pay all wages, salaries, and other compensation of the court clerks including payroll taxes, retirement, social security taxes, if any, and any other payroll expenses for the services provided by City of La Porte;

(c) Provide facilities for the municipal court judge and prosecutor for City of Morgan's Point to prepare for and hold court, and conduct such activities as are necessary to the fulfillment of court obligations. City of La Porte will provide a municipal court clerk to act for the municipal court of City of Morgan's Point when court is in session.

(d) Timely deposit all fines and costs collected for the City of Morgan's Point to the financial institution of their designation.

III.

City of Morgan's Point shall:

(a) Pay to City of La Porte for the municipal court services described above the sum of \$20,000.00 for each fiscal year this Agreement is in place for the first 600 citations processed through City of La Porte's Municipal Court under this Agreement, and will pay \$31.00 per citation above 600. This payment shall be prorated and paid monthly. This Agreement shall become effective on September 1, 2015, and City of Morgan's Point shall pay City of La Porte \$1,667.00 for that month.

(b) Provide whatever Ordinances may be necessary to give City of La Porte the full authority, power, rights, and privileges to act for City of Morgan's Point in accordance with this agreement; and

(c) Appoint and provide judicial, prosecutorial and bailiff personnel, including the Municipal Court Judge, Associate or Alternate Court Judge, Prosecuting Attorney, Assistant Prosecuting Attorneys and Clerk of the Court. City of Morgan's Point shall be solely responsible for the payment of any fees due to these appointees, except as provided in Section II (b) of this Agreement.

(d) All case records with final dispositions shall be stored at City of Morgan's Point.

(e) Will ensure that its court software is consistent with that used by City of La Porte. Any costs required for licenses, set up, repair, updates, interfaces, or maintenance to the court management software shall be borne solely by City of Morgan's Point. City of La Porte shall provide the work station to house City of Morgan's Point court software at City of La Porte Municipal Court. City of Morgan's Point agrees to pay the costs of printing citation books and court files.

(f) Will adopt a window fine schedule and standing orders that are identical to those of City of La Porte.

IV.

This Agreement shall be for a term of three fiscal years plus one month, commencing on September 1, 2015, and extending through September 30, 2018; provided, however, that this Agreement shall automatically extend for successive one year terms unless notice of termination is given by June 30 prior to the end of any term. Provided further, that either party may terminate this Agreement by giving notice to the other party at least 90 days prior to the date of termination. All written notice shall be sent to the address of the parties shown herein.

V.

In order to have a more effective relationship between the parties, and to provide the best possible municipal court operations, it is mutually agreed that all questions arising under this Agreement shall be handled and resolved between the City Administrator of City of Morgan's

Point and the City Manager of City of La Porte, or their designee, and they may also bring any questions to the governing bodies of the respective cities.

VI.

(a) At all times this agreement is in force, the municipal court clerk of City of La Porte shall be under the supervision of the appropriate staff at City of La Porte, and is fully an employee of the City of La Porte. City of Morgan's Point shall have no supervisory role or obligation for employment conditions.

(b) Each party shall pay for services provided under this Agreement out of current annual funds.

(c) Each party agrees that this Agreement fairly compensates each party for the services and functions performed under this Agreement.

(d) To the extent permitted by law, no public official or employee of either City of Morgan's Point or City of La Porte shall be personally liable for any action arising from the performance of duties under this Agreement.

(e) The City of Morgan's Point municipal court staff and police force have been responsible for issuance of tickets and all legal requirements related to the processing of citations through their own municipal court, and will continue to have its own police force issue tickets within its boundaries. City of Morgan's Point agrees to hold the City of La Porte harmless as to any errors in the issuance of citations, paperwork or other court management activities that City of La Porte has no involvement in or control over.

VII.

Independent Contractor. Both parties mutually agree that City of La Porte is an independent contractor, and shall have exclusive control of performance hereunder, and is in no way to be considered an employee of the City of Morgan's Point. Nothing herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint-venturers, or any similar relationship.

VIII.

Risks. Each party agrees to carry such policies of insurance as each deems appropriate to cover any risks arising out of this Agreement; provided further that City of La Porte agrees to carry, as a minimum, insurance with liability limits of One Million Dollars "aggregate." Policies are available for inspection by City of Morgan's Point upon request.

IX.

No third party beneficiaries. This Agreement inures to the benefit of and obligates only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it.

X.

No waiver of immunity. Nothing in this Agreement shall be construed to waive any immunities from suit or liability enjoyed by the parties, their past or present officers, employees, or agents.

XI.

Venue. Venue for any dispute arising under this Agreement shall lie exclusively in the state and federal courts of Harris County, Texas.

XII.

Amendments. This agreement may be modified, changed, or altered at any time, upon mutual agreement of parties, provided that any such modification, change, or alteration be reduced to writing.

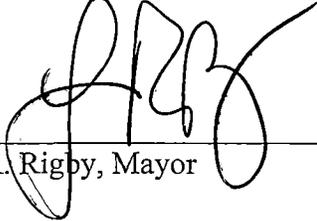
XIII.

Severability. If any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect, and the parties shall be deemed to have contracted as if said clause, section, paragraph or portion had not been in the Agreement initially.

IN WITNESS WHEREOF, we have hereunto set our hands effective the 24th day of August, 2015, in duplicate originals in Harris County, Texas.

CITY OF LA PORTE

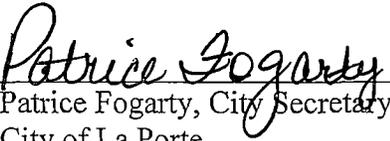
CITY OF MORGAN'S POINT

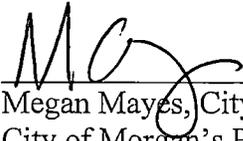
By: 
Louis R. Rigby, Mayor

By: 
Michel J. Bechtel, Mayor

ATTEST:

ATTEST:


Patrice Fogarty, City Secretary
City of La Porte


Megan Mayes, City Secretary
City of Morgan's Point

THE STATE OF TEXAS
COUNTY OF HARRIS

§
§
§

INTERLOCAL AGREEMENT—COURT

Whereas, the City of La Porte, Texas, and the City of Morgan’s Point, Texas are adjacent to one another, and City of Morgan’s Point finds that efficiency of city services will be better served by the use of City of La Porte’s facilities for municipal court services; and

Whereas, the parties enter into this Agreement for the purpose of providing municipal court services for the benefit of their communities;

Now, therefore, the City Councils of the City of La Porte and the City of Morgan’s Point mutually agree as follows:

I.

City of La Porte and City of Morgan’s Point enter into this Agreement by and through their duly elected officials, and it is the intention of both parties to conform this Agreement in all respects with Chapter 791 of the Texas Government Code, more commonly known as “The Interlocal Cooperation Act.”

II.

City of La Porte shall:

(a) Provide municipal court clerical services. This includes collecting and receipting fines and court costs, filing Office of Court Administration Reports, filing State Comptroller’s Office reports, remitting payments to the State Comptroller, preparing reports of moving traffic convictions to the Department of Public Safety and all other reasonable and necessary functions of a municipal court. City of La Porte shall collect fines and costs in connection with citations issued by the City of Morgan’s Point, process citations in the dedicated court software; answer questions from defendants, enter and clear warrants and cases in SETCIC, Incode and OMNI; and perform other municipal court duties as required in the normal course of business.

(b) Pay all wages, salaries, and other compensation of the court clerks including payroll taxes, retirement, social security taxes, if any, and any other payroll expenses for the services provided by City of La Porte;

(c) Provide facilities for the municipal court judge and prosecutor for City of Morgan’s Point to prepare for and hold court, and conduct such activities as are necessary to the fulfillment of court obligations. City of La Porte will provide a municipal court clerk to act for the municipal court of City of Morgan’s Point when court is in session.

(d) Timely deposit all fines and costs collected for the City of Morgan’s Point to the financial institution of their designation.

III.

City of Morgan's Point shall:

(a) Pay to City of La Porte for the municipal court services described above the sum of \$~~438,500~~00.00 for ~~each the first~~ fiscal year this Agreement is in place for the first 600 citations processed through City of La Porte's Municipal Court under this Agreement, and will pay \$~~7280~~00 per citation above 600. The City shall increase the sum paid to the City of La Porte by three percent (3%) each fiscal year this Agreement is in place after the initial fiscal year. This payment shall be prorated and paid monthly. This Agreement shall become effective on ~~September~~ October 1, 2018, ~~and City of Morgan's Point shall pay City of La Porte \$4,000.00 for that month.~~

(b) Provide whatever Ordinances may be necessary to give City of La Porte the full authority, power, rights, and privileges to act for City of Morgan's Point in accordance with this agreement; and

(c) Appoint and provide judicial, prosecutorial and bailiff personnel, including the Municipal Court Judge, Associate or Alternate Court Judge, Prosecuting Attorney, Assistant Prosecuting Attorneys and Clerk of the Court. City of Morgan's Point shall be solely responsible for the payment of any fees due to these appointees, except as provided in Section II (b) of this Agreement.

(d) Store aAll case records with final dispositions ~~shall be stored~~ at City of Morgan's Point.

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(f) Will adopt a window fine schedule and standing orders that are identical to those of City of La Porte.

IV.

This Agreement shall be for a term of ~~five~~three fiscal years ~~plus one month~~, commencing on ~~September~~ October 1, 2018, and extending through September 30, 202~~3~~4; provided, however, that this Agreement shall automatically extend for successive one year terms unless notice of termination is given by June 30 prior to the end of any term. Provided further, that either party may terminate this Agreement by giving notice to the other party at least 90 days prior to the date of termination. All written notice shall be sent to the address of the parties shown herein.

V.

In order to have a more effective relationship between the parties, and to provide the best possible municipal court operations, it is mutually agreed that all questions arising under this Agreement shall be handled and resolved between the City Administrator of City of Morgan's Point and the City Manager of City of La Porte, or their designee, and they may also bring any questions to the governing bodies of the respective cities.

VI.

(a) At all times this agreement is in force, the municipal court clerk of City of La Porte shall be under the supervision of the appropriate staff at City of La Porte, and is fully an employee of the City of La Porte. City of Morgan's Point shall have no supervisory role or obligation for employment conditions.

(b) Each party shall pay for services provided under this Agreement out of current annual funds.

(c) Each party agrees that this Agreement fairly compensates each party for the services and functions performed under this Agreement.

(d) To the extent permitted by law, no public official or employee of either City of Morgan's Point or City of La Porte shall be personally liable for any action arising from the performance of duties under this Agreement.

(e) The City of Morgan's Point municipal court staff and police force have been responsible for issuance of tickets and all legal requirements related to the processing of citations through their own municipal court, and will continue to have its own police force issue tickets within its boundaries. City of Morgan's Point agrees to hold the City of La Porte harmless as to any errors in the issuance of citations, paperwork or other court management activities that City of La Porte has no involvement in or control over.

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Risks. Each party agrees to carry such policies of insurance as each deems appropriate to cover any risks arising out of this Agreement; provided further that City of La Porte agrees to carry, as a minimum, insurance with liability limits of One Million Dollars "aggregate." Policies are available for inspection by City of Morgan's Point upon request.

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No waiver of immunity. Nothing in this Agreement shall be construed to waive any immunities from suit or liability enjoyed by the parties, their past or present officers, employees, or agents.

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Amendments. This agreement may be modified, changed, or altered at any time, upon mutual agreement of parties, provided that any such modification, change, or alteration be reduced to writing.

XIII.

Severability. If any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect, and the parties shall be deemed to have contracted as if said clause, section, paragraph or portion had not been in the Agreement initially.

IN WITNESS WHEREOF, we have hereunto set our hands effective the _____ day of _____, 2018~~5~~, in duplicate originals in Harris County, Texas.

CITY OF LA PORTE

CITY OF MORGAN’S POINT

By: _____
Louis R. Rigby, Mayor

By: _____
Michel Bechtel, Mayor

ATTEST:

ATTEST:

Patrice Fogarty, City Secretary
City of La Porte

Megan Mayes, City Secretary
City of Morgan’s Point

THE STATE OF TEXAS §
 § INTERLOCAL AGREEMENT—COURT
COUNTY OF HARRIS §

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(b) Provide whatever Ordinances may be necessary to give City of La Porte the full authority, power, rights, and privileges to act for City of Morgan's Point in accordance with this agreement; and

(c) Appoint and provide judicial, prosecutorial and bailiff personnel, including the Municipal Court Judge, Associate or Alternate Court Judge, Prosecuting Attorney, Assistant Prosecuting Attorneys and Clerk of the Court. City of Morgan's Point shall be solely responsible for the payment of any fees due to these appointees, except as provided in Section II (b) of this Agreement.

(d) Store all case records with final dispositions at City of Morgan's Point.

(e) Ensure that its court software is consistent with that used by LaPorte. Any costs required for licenses, set up, repair, updates, interfaces, or maintenance to the court management software shall be borne solely by City of Morgan's Point. City of La Porte shall provide the server and work station to house City of Morgan's Point court software at City of La Porte City Hall. City of Morgan's Point agrees to pay the costs of printing citation books and court files.

(f) Will adopt a window fine schedule and standing orders that are identical to those of City of La Porte.

IV.

This Agreement shall be for a term of five fiscal years, commencing on October 1, 2018, and extending through September 30, 2023; provided, however, that this Agreement shall automatically extend for successive one year terms unless notice of termination is given by June 30 prior to the end of any term. Provided further, that either party may terminate this Agreement by giving notice to the other party at least 90 days prior to the date of termination. All written notice shall be sent to the address of the parties shown herein.

V.

In order to have a more effective relationship between the parties, and to provide the best possible municipal court operations, it is mutually agreed that all questions arising under this Agreement shall be handled and resolved between the City Administrator of City of Morgan's Point and the City Manager of City of La Porte, or their designee, and they may also bring any questions to the governing bodies of the respective cities.

VI.

(a) At all times this agreement is in force, the municipal court clerk of City of La Porte shall be under the supervision of the appropriate staff at City of La Porte, and is fully an employee of the City of La Porte. City of Morgan’s Point shall have no supervisory role or obligation for employment conditions.

(b) Each party shall pay for services provided under this Agreement out of current annual funds.

(c) Each party agrees that this Agreement fairly compensates each party for the services and functions performed under this Agreement.

(d) To the extent permitted by law, no public official or employee of either City of Morgan’s Point or City of La Porte shall be personally liable for any action arising from the performance of duties under this Agreement.

(e) The City of Morgan’s Point municipal court staff and police force have been responsible for issuance of tickets and all legal requirements related to the processing of citations through their own municipal court, and will continue to have its own police force issue tickets within its boundaries. City of Morgan’s Point agrees to hold the City of La Porte harmless as to any errors in the issuance of citations, paperwork or other court management activities that City of La Porte has no involvement in or control over.

VII.

Independent Contractor. Both parties mutually agree that City of La Porte is an independent contractor, and shall have exclusive control of performance hereunder, and is in no way to be considered an employee of the City of Morgan’s Point. Nothing herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint-venturers, or any similar relationship.

VIII.

Risks. Each party agrees to carry such policies of insurance as each deems appropriate to cover any risks arising out of this Agreement; provided further that City of La Porte agrees to carry, as a minimum, insurance with liability limits of One Million Dollars “aggregate.” Policies are available for inspection by City of Morgan’s Point upon request.

IX.

No third party beneficiaries. This Agreement inures to the benefit of and obligates only the parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it.

X.

No waiver of immunity. Nothing in this Agreement shall be construed to waive any immunities from suit or liability enjoyed by the parties, their past or present officers, employees, or agents.

XI.

Venue. Venue for any dispute arising under this Agreement shall lie exclusively in the state and federal courts of Harris County, Texas.

XII.

Amendments. This agreement may be modified, changed, or altered at any time, upon mutual agreement of parties, provided that any such modification, change, or alteration be reduced to writing.

XIII.

Severability. If any clause, paragraph, section or portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect, and the parties shall be deemed to have contracted as if said clause, section, paragraph or portion had not been in the Agreement initially.

IN WITNESS WHEREOF, we have hereunto set our hands effective the _____ day of _____, 2018, in duplicate originals in Harris County, Texas.

CITY OF LA PORTE

CITY OF MORGAN’S POINT

By: _____
Louis R. Rigby, Mayor

By: _____
Michel Bechtel, Mayor

ATTEST:

ATTEST:

Patrice Fogarty, City Secretary
City of La Porte

Megan Mayes, City Secretary
City of Morgan’s Point

REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: September 10, 2018

Appropriation

Requested By: Michael G. Dolby

Source of Funds: _____

Department: Finance

Account Number: _____

Report: Resolution: Ordinance:

Amount Budgeted: _____

Other: _____

Amount Requested: _____

Budgeted Item: YES NO

Attachments :

- 1. Notice of Public Hearing for FY2019 Budget**
- 2. PowerPoint Presentation**

SUMMARY & RECOMMENDATIONS

On July 23rd, Council approved that a Public Hearing for the Fiscal Year 2018-2019 Proposed Budget be held on Monday, September 10, 2018, at the regularly scheduled Council meeting, which begins at 6:00 p.m. The public hearing was posted in the Bay Area Observer on August 30, 2018.

The City Council held budget workshops on August 13 through August 14, 2018 to discuss proposed budgets for the fiscal year beginning October 1, 2018 and ending September 30, 2019.

Action Required of Council:

Conduct the Public Hearing on the City's FY 2018-2019 Proposed Budget.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

THE STATE OF TEXAS)

COUNTY OF HARRIS)

CITY OF LA PORTE)

NOTICE OF PUBLIC HEARING

Notice is hereby given that the City Council of the City of La Porte will hold a Public Hearing on the 10th day of September 2018, in the Council Chambers of the City Hall, 604 West Fairmont Parkway, La Porte, Texas, beginning at 6:00 P.M. The purpose of this hearing is to provide citizens the opportunity to comment on the overall budget.

This budget will raise less revenue from property taxes than last year's budget by \$-1,509,587.00, which is a -6.80 percent decrease from last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is \$274,982.00.

The City of La Porte must, by Charter requirement, adopt its fiscal budget by September 30, 2018. Copies of the adopted budget will be available for public inspection and copying at the office of the City Secretary, City Hall, 604 West Fairmont Parkway, La Porte, Texas, during normal business hours. Copies will also be made available on the City's website.

CITY OF LA PORTE

Patrice Fogarty, TRMC, MMC
City Secretary

City of La Porte
FY 2018-19 Budget
Public Hearing

September 10, 2018



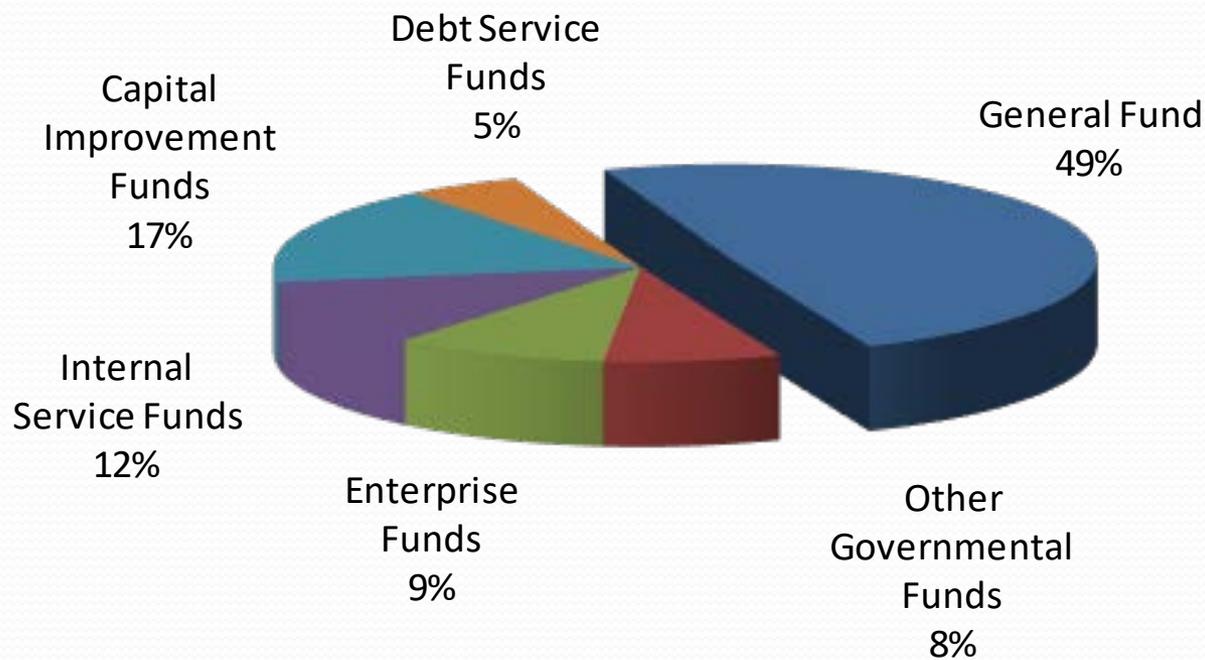


Budget Summary for Fiscal Year 2019

- No increase in property tax rate
- No utility fund rate increase
- Merit increases for non-civil service employees (\$486,248)
- Meet & confer increases for civil service employees (\$267,264)
- No change to health insurance
- Capital projects of approximately \$17.6 million
(Including \$1.2 million from Street Maintenance Sales Tax Funding)
- Vehicle replacement of \$664,590
- \$1.2 million from the General Fund for CIP
- \$2 million transfer from General Fund for health insurance



Expenditures - All Funds





Consolidated Summary of All Funds

(In millions)

	Working Capital 09/30/18	FY 18-19 Revenues	FY 18-19 Expenses	Working Capital 09/30/19
General Fund	40.87	48.13	46.02	42.98
Special Revenue	8.32	6.13	7.25	7.21
Enterprise	8.20	9.70	8.78	9.12
Internal Service	5.97	12.17	10.65	7.48
Capital Improvement	15.53	2.76	15.74	2.56
Debt Service	4.31	4.43	4.73	4.00
Total All Funds	83.19	83.32	93.17	73.34

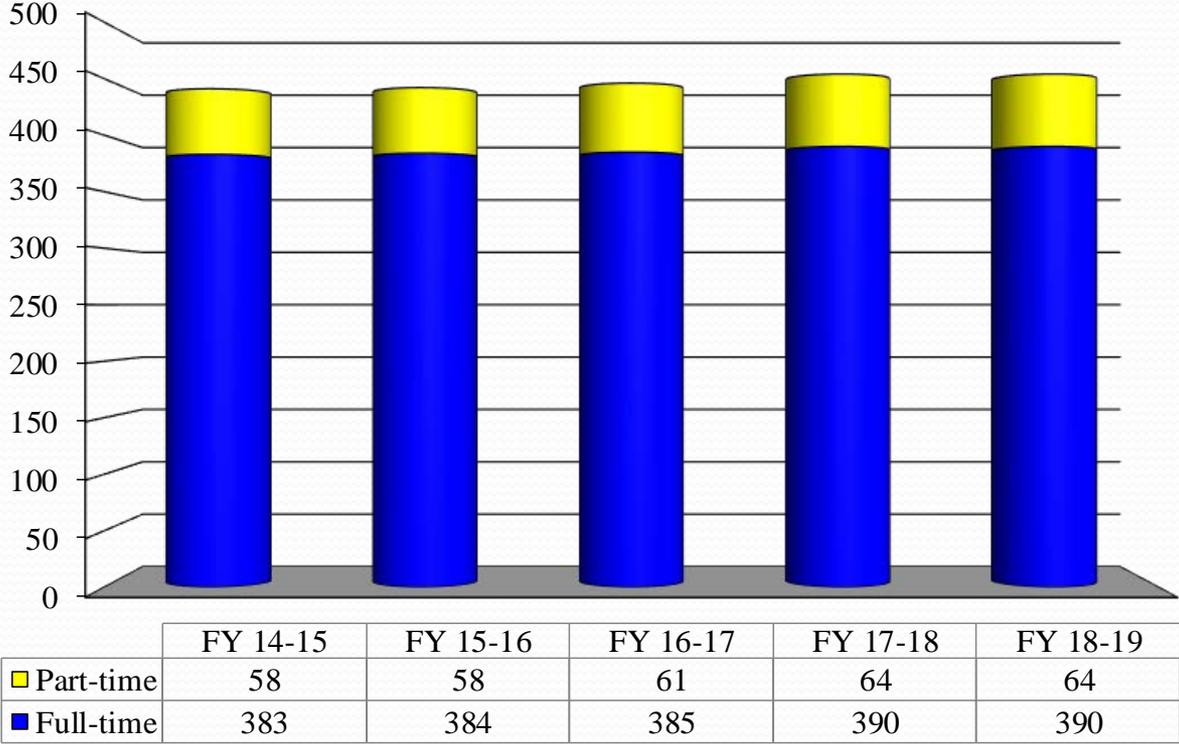


Revenues - All Funds

Description	Actual 2016-17	Budget 2017-18	Revised 2017-18	Projected 2018-19	Percent Change
General Property Taxes	21.49	21.20	21.63	20.82	-1.78%
Franchise Fees	2.25	2.43	2.55	2.92	20.19%
Sales Taxes	9.95	9.00	10.00	10.00	11.11%
Industrial Payments	14.27	13.38	14.03	13.75	2.80%
Other Taxes	0.91	0.79	0.74	0.79	0.00%
License & Permits	0.54	0.49	0.66	0.65	31.46%
Fines & Forfeits	1.97	1.68	1.71	1.69	0.74%
Charges for Services	9.00	9.03	9.04	9.26	2.59%
Parks & Recreation	0.26	0.27	0.28	0.28	3.99%
Recreation & Fitness Center	0.27	0.26	0.27	0.27	0.30%
Employee Health Service	5.32	5.21	5.35	6.01	15.39%
Water Revenue	5.96	6.26	6.04	5.98	-4.34%
Wastewater Revenue	3.55	3.50	3.49	3.43	-1.97%
Intergovernmental	1.08	0.41	0.41	0.24	-41.23%
Miscellaneous	0.53	0.10	0.11	0.10	0.00%
Operating Transfers	8.64	9.75	9.75	7.48	-23.32%
Other Financing Sources	0.82	0.13	0.13	0.13	-0.43%
Interest	0.60	0.47	0.74	0.65	37.76%
Grand Total All Revenue	87.41	84.35	86.91	84.44	0.11%

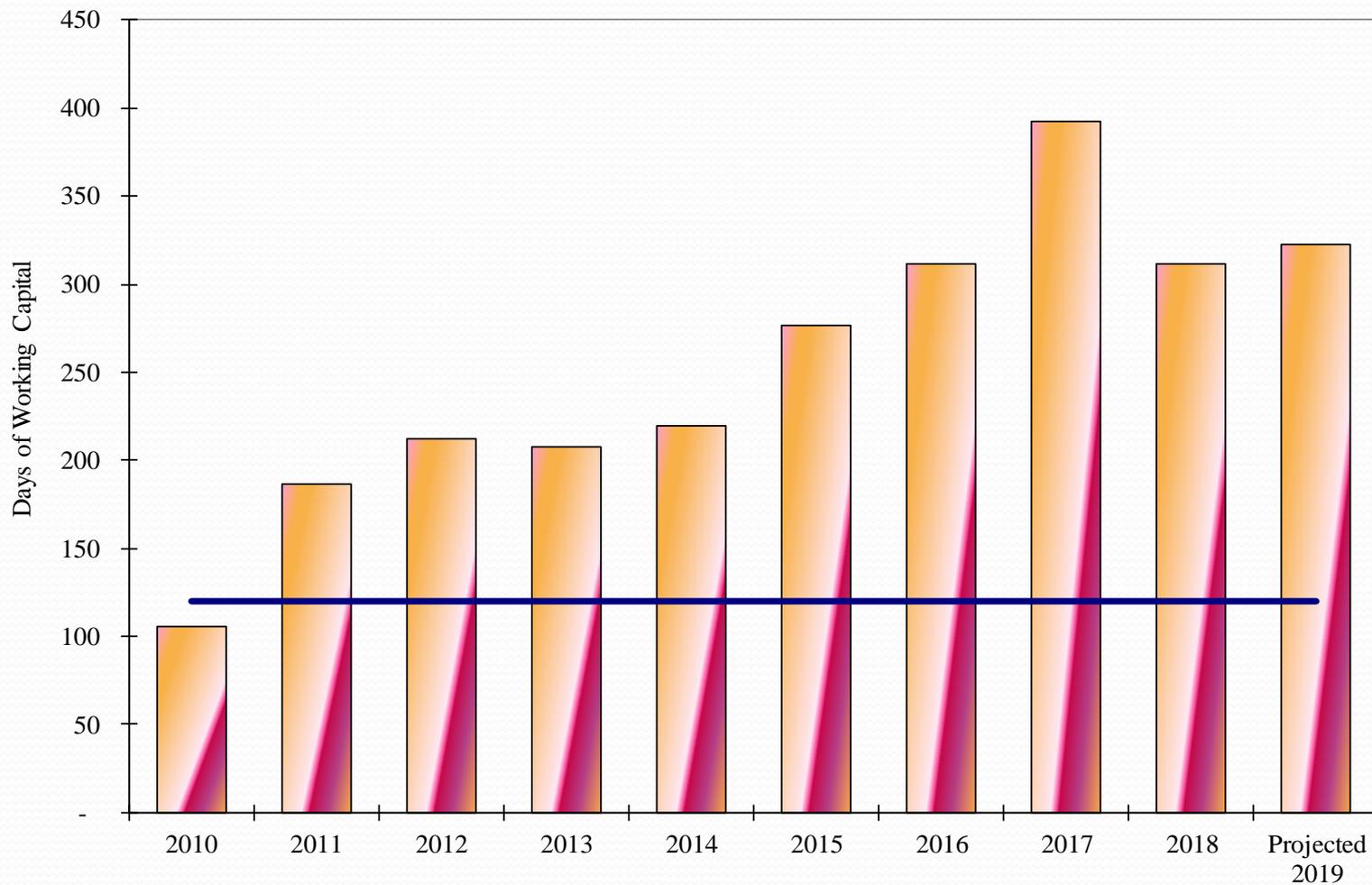


Employee Positions Citywide





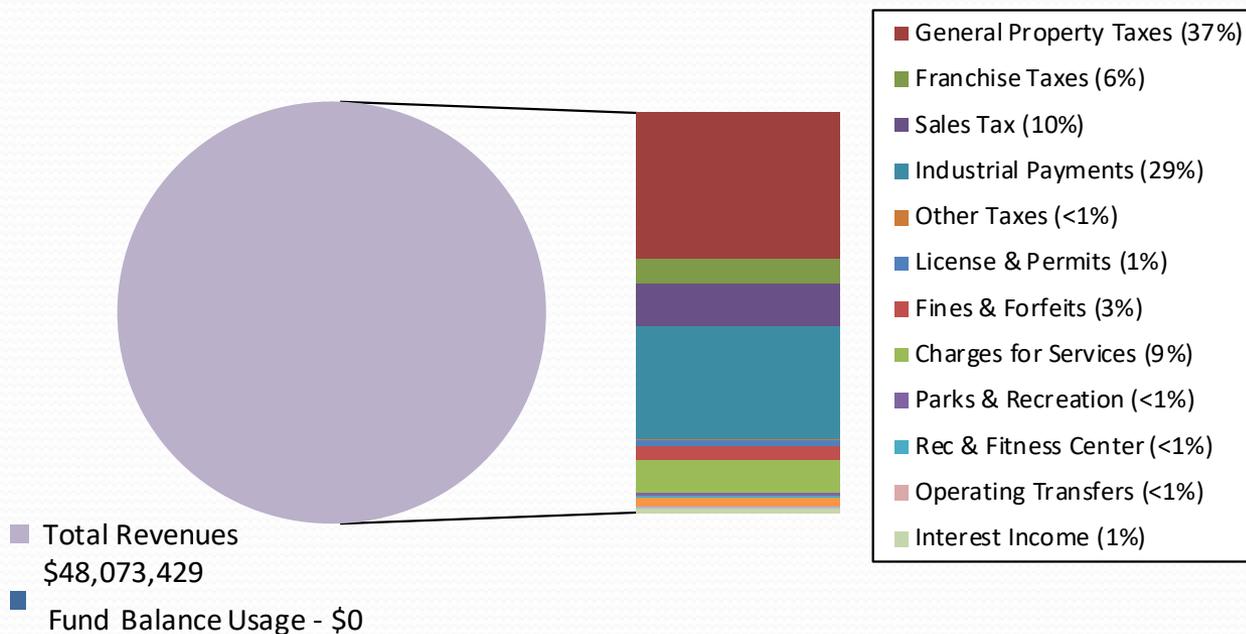
General Fund Days of Working Capital





General Fund Revenue Sources

Where the Money Comes From



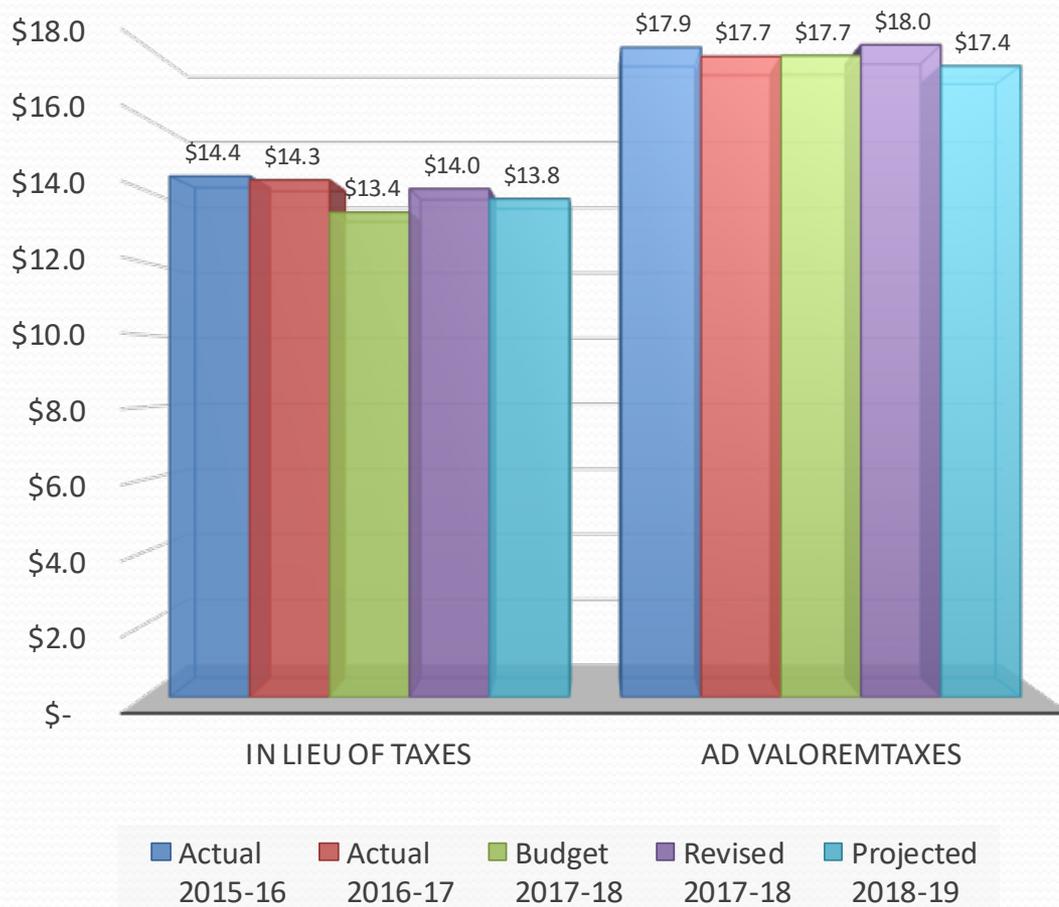


General Fund Revenues

Revenues: <i>(in millions)</i>	Actual 2016-17	Budget 2017-18	Estimated 2017-18	Projected 2018-19	Percent Change
General Property Taxes	18.184	17.961	18.261	17.677	-1.58%
Franchise Taxes	2.252	2.429	2.551	2.919	20.19%
Sales Taxes	4.983	4.500	5.000	5.000	11.11%
Industrial Payments	14.271	13.375	14.028	13.750	2.80%
Other Taxes	0.087	0.090	0.090	0.090	0.00%
Licenses & Permits	0.536	0.492	0.661	0.646	31.46%
Fines Forfeits	1.627	1.556	1.550	1.560	0.22%
Charges for Services	4.124	4.087	4.111	4.195	2.62%
Parks & Recreation	0.259	0.268	0.276	0.279	3.99%
Recreation & Fitness	0.274	0.264	0.265	0.265	0.30%
Golf Course	1.016	1.066	1.027	1.123	5.35%
Miscellaneous	0.415	0.100	0.100	0.100	0.00%
Operating Transfers	0.125	0.127	0.127	0.127	0.00%
Interest	0.357	0.325	0.400	0.400	23.08%
Total Revenues	48.512	46.639	48.447	48.129	3.20%

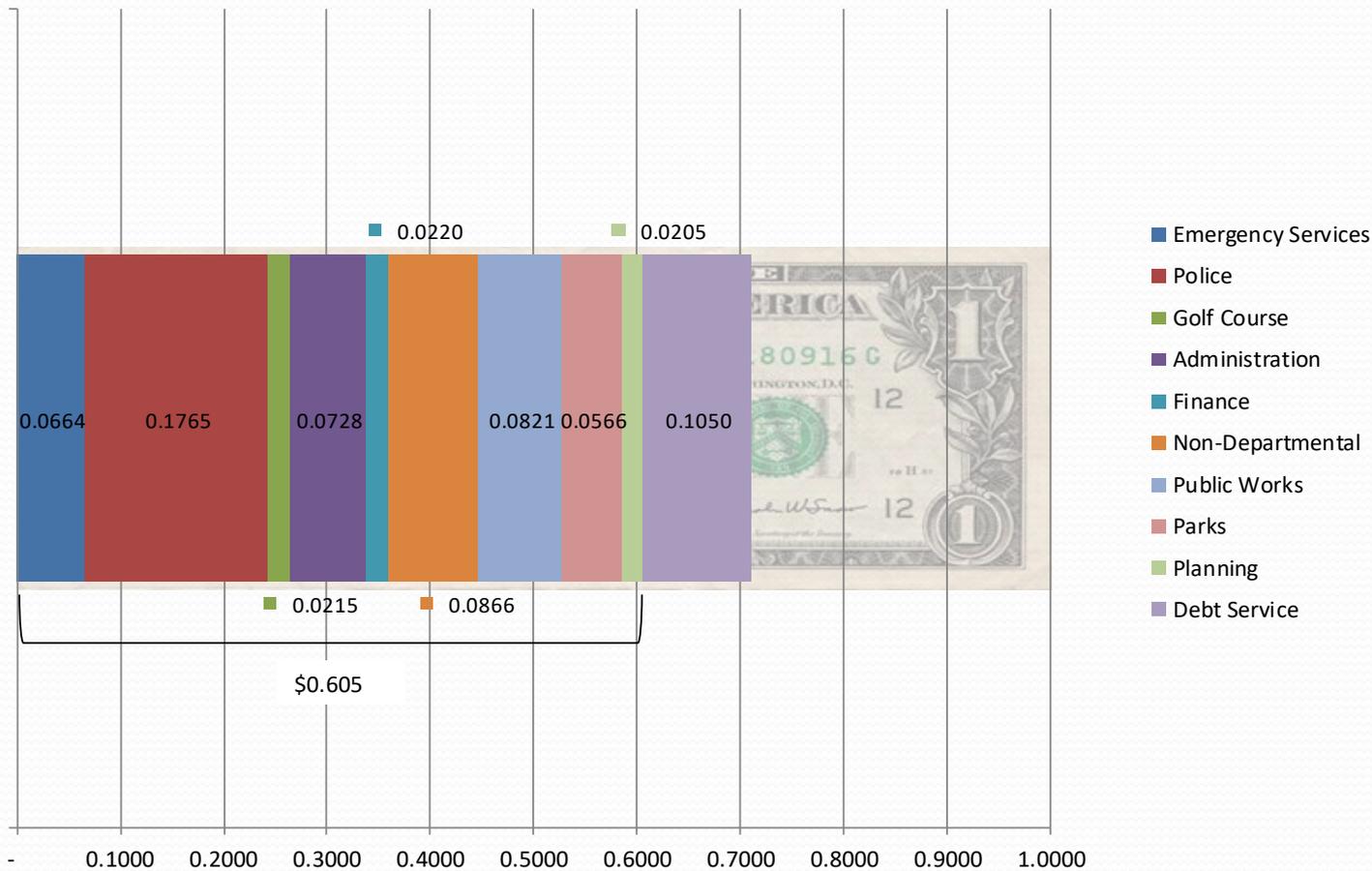


General Fund Revenues In Lieu of Taxes & Ad Valorem Taxes





Tax Rate Breakdown by Department





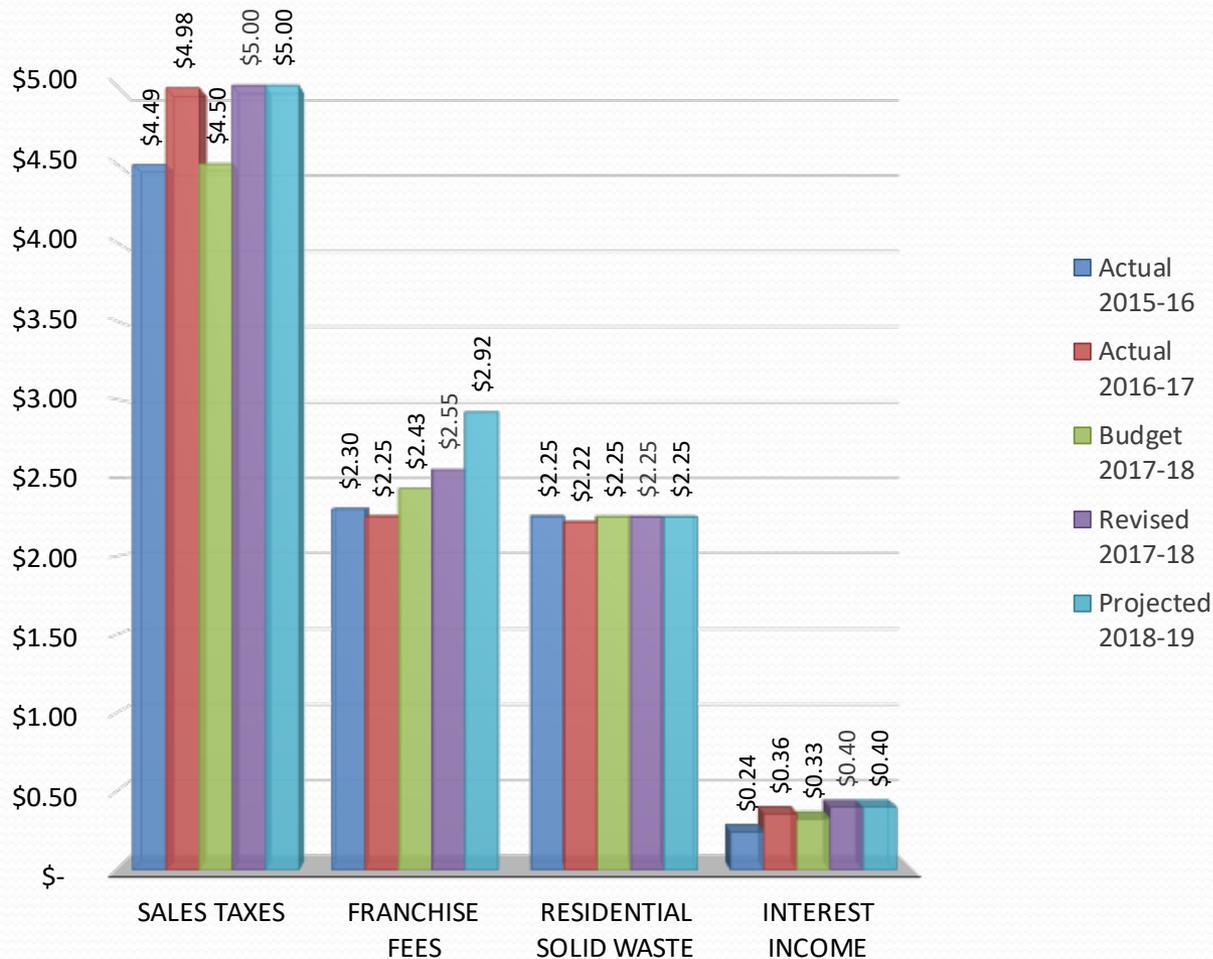
Industrial Payments Historical Trends

	Budget		
	Projection	Actual	Variance
2009	9,860,078	10,181,383	321,305
2010	8,718,883	10,464,176	1,745,293
2011	10,000,000	9,937,767	(62,233)
2012	9,900,000	10,471,444	571,444
2013	10,530,376	11,107,848	577,472
2014	11,086,500	11,554,949	468,449
2015	12,054,598	12,269,152	214,554
2016	12,436,672	14,377,602	1,940,930
2017	12,500,000	14,270,899	1,770,899
2018	13,375,000	14,028,000	653,000



General Fund Revenues

Sales Tax, Franchise Taxes, Residential Solid Waste and Interest





General Fund

- Emergency Services
- Police
- Golf Course
- Administration
- Finance
- Public Works
- Parks & Recreation
- Planning & Engineering



General Fund Expenditures

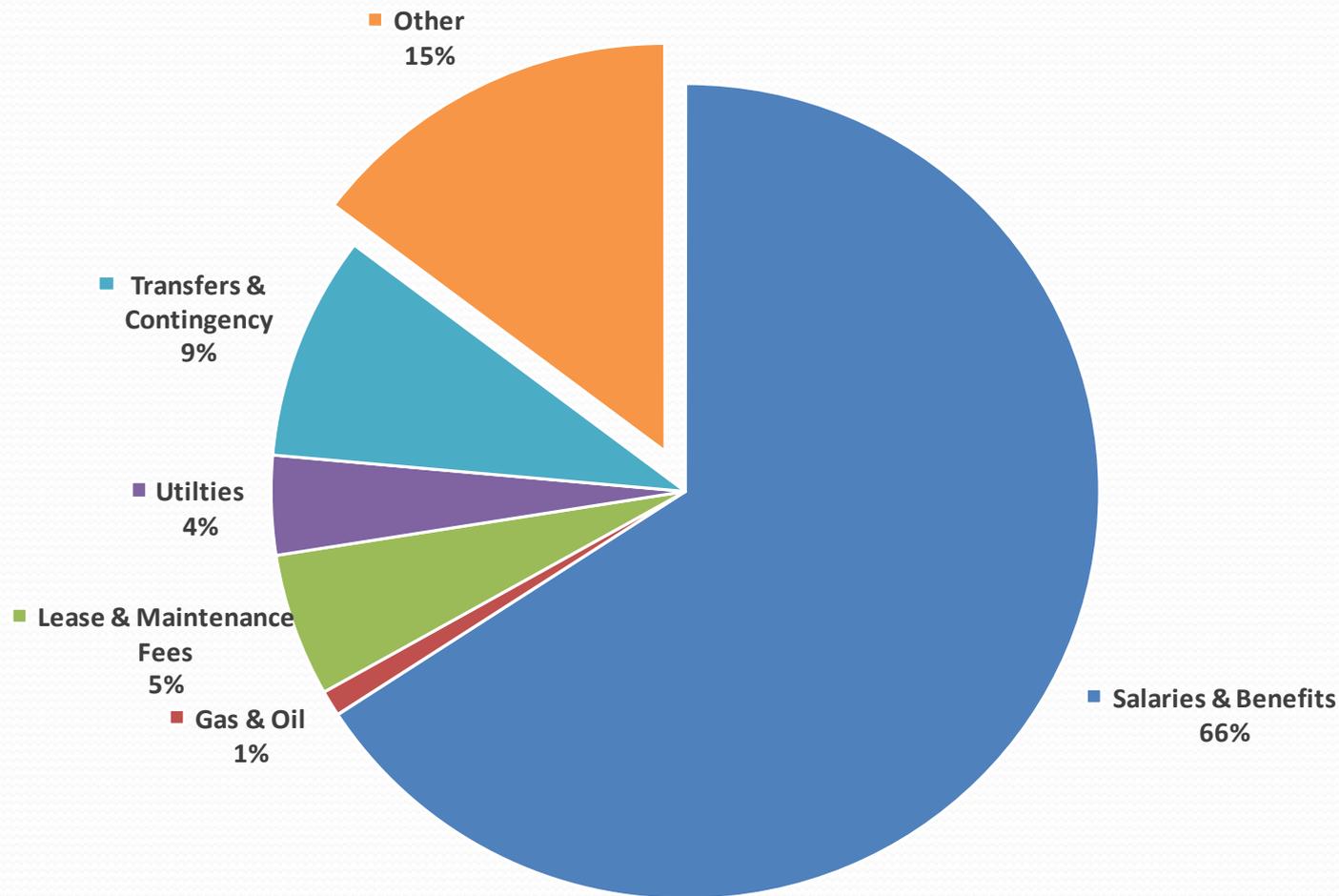
General Fund (Excluding Non-Departmental)	Requested	CMO Cuts	Proposed
Emergency Services	5,191,258	(7,313)	5,183,945
Police	13,895,662	(124,898)	13,770,764
Golf Course	1,710,282	(32,500)	1,677,782
Administration	5,774,185	(96,671)	5,677,514
Finance	1,717,309	-	1,717,309
Public Works	6,453,818	(50,043)	6,403,775
Parks & Recreation	4,405,796	13,559	4,419,355
Planning & Development	1,577,199	24,208	1,601,407
General Fund Total	40,725,509	(273,658)	40,451,851

*The FY2019 expenditures are projected to be \$568,000 lower than FY2018.

*Additionally, the FY2019 budget estimates a surplus of \$866,856.

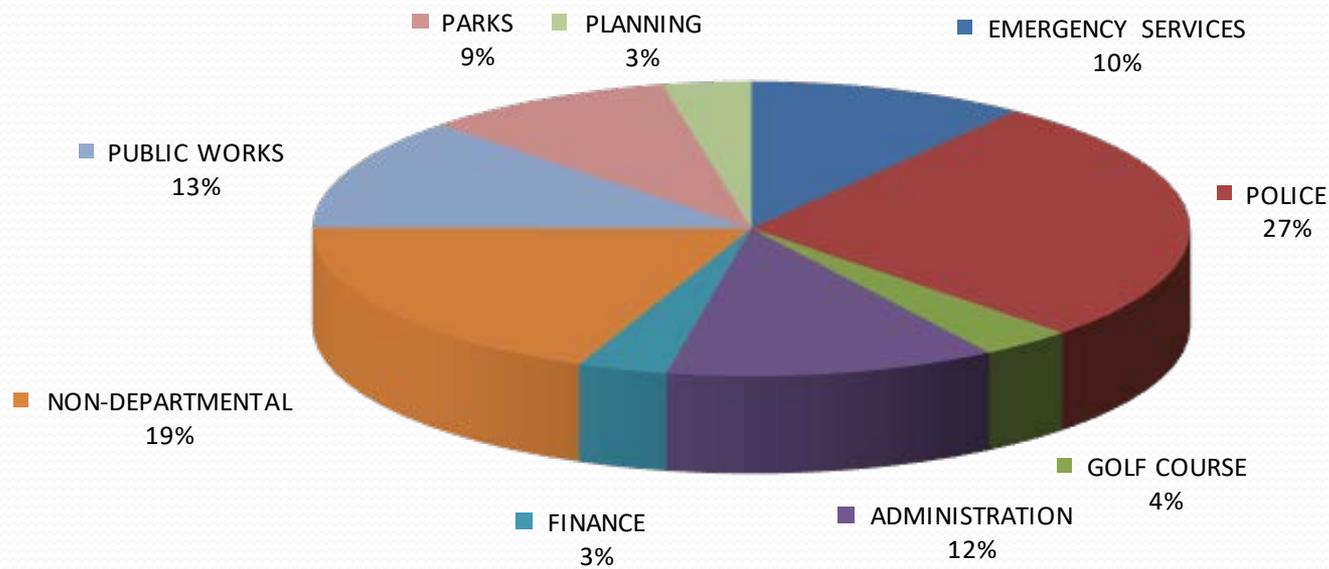


General Fund Expenditures





Expenditures by Activity





General Fund Expenditures

Expenditures: <i>(in millions)</i>	Actual 2016-17	Budget 2017-18	Estimated 2017-18	Projected 2018-19	Percent * Change
Emergency Services	4.79	5.10	4.78	5.18	1.64%
Police	12.77	13.74	13.25	13.77	0.21%
Golf Course	1.53	1.72	1.70	1.68	-2.24%
Administration	5.88	6.28	6.03	5.68	-9.66%
Finance	1.54	1.66	1.59	1.72	3.51%
Non-Departmental	7.53	8.30	8.22	6.75	-18.59%
Public Works	5.80	6.18	6.14	6.40	3.68%
Parks	4.13	4.62	4.54	4.42	-4.26%
Planning	1.55	1.66	1.54	1.60	-3.62%
Total Expenditures	45.51	49.25	47.79	47.21	-4.16%

**Budget to Budget*

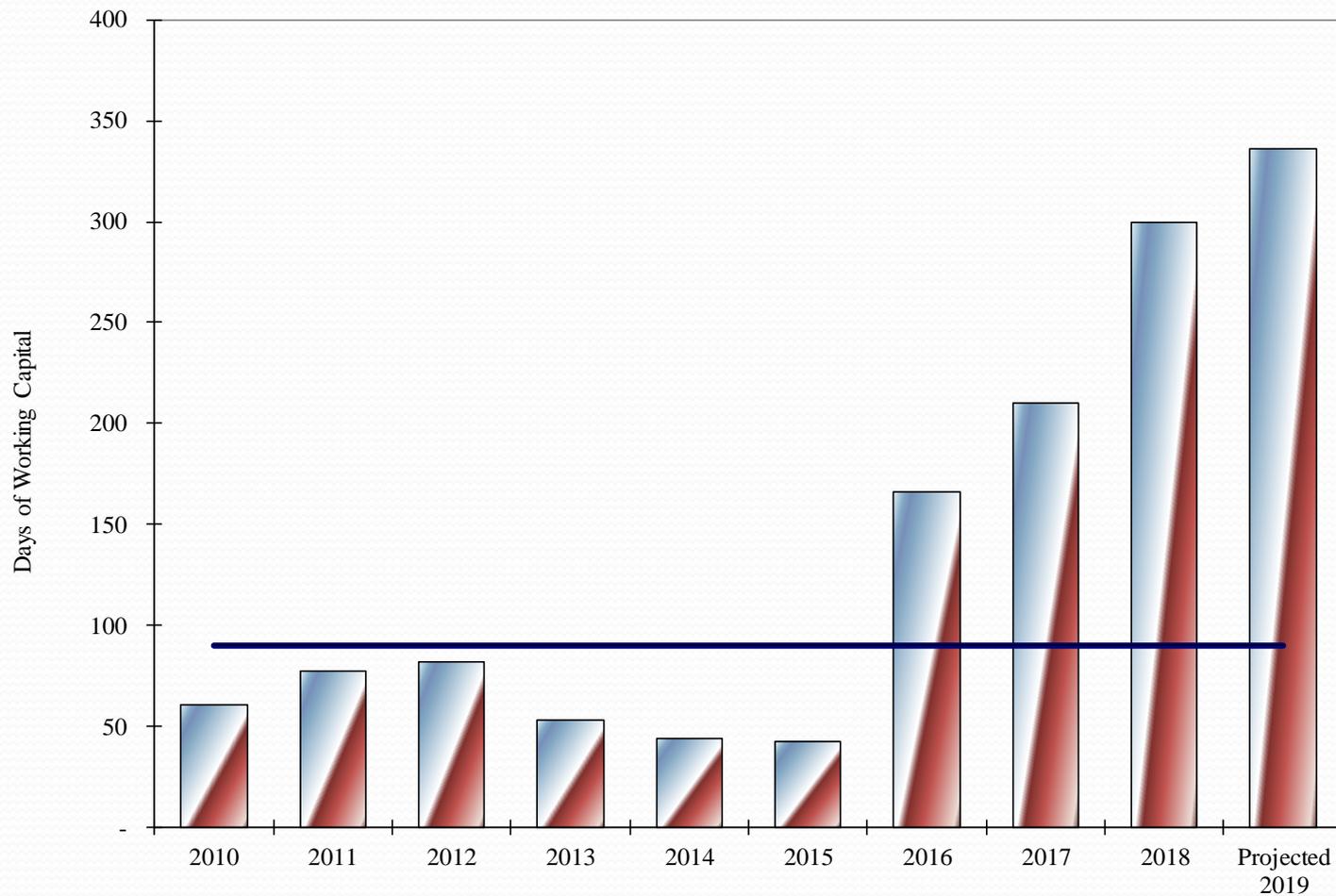


Utility Fund

- Water Production
- Water Distribution
- Wastewater Collection
- Wastewater Treatment
- Utility Billing
- Non-Departmental

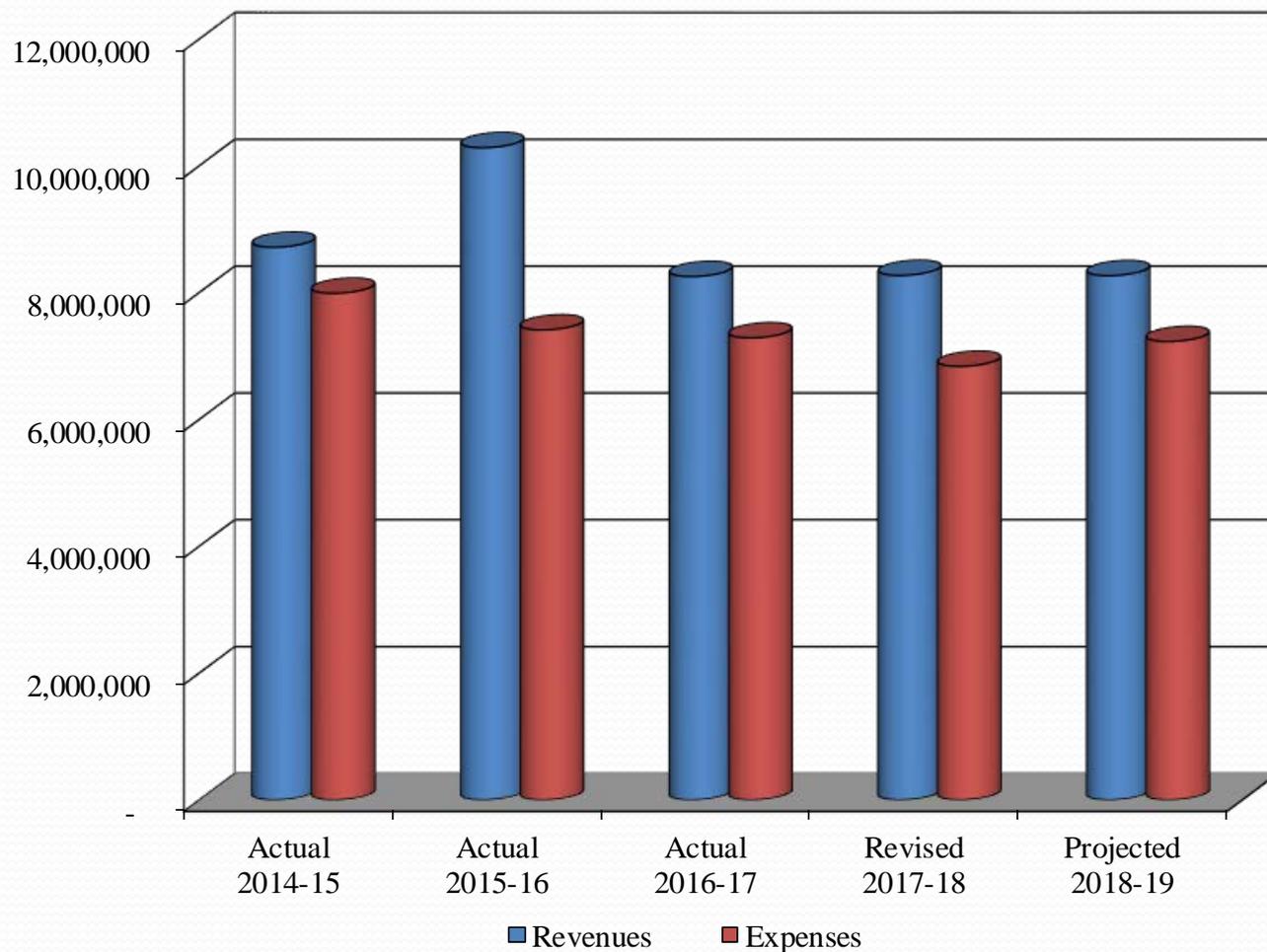


Utility Fund Days of Working Capital





Utility Fund Comparison Revenues vs. Expenses



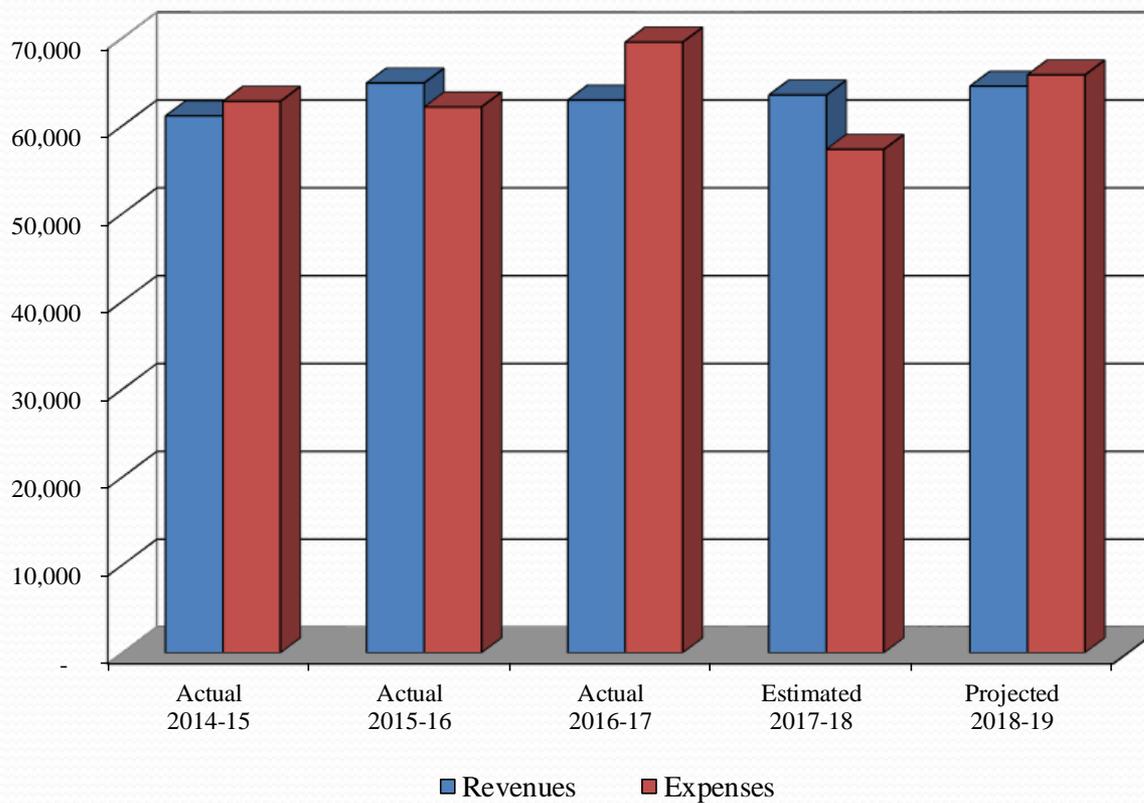


Other Enterprise Funds

- Airport Fund
- La Porte Area Water Authority



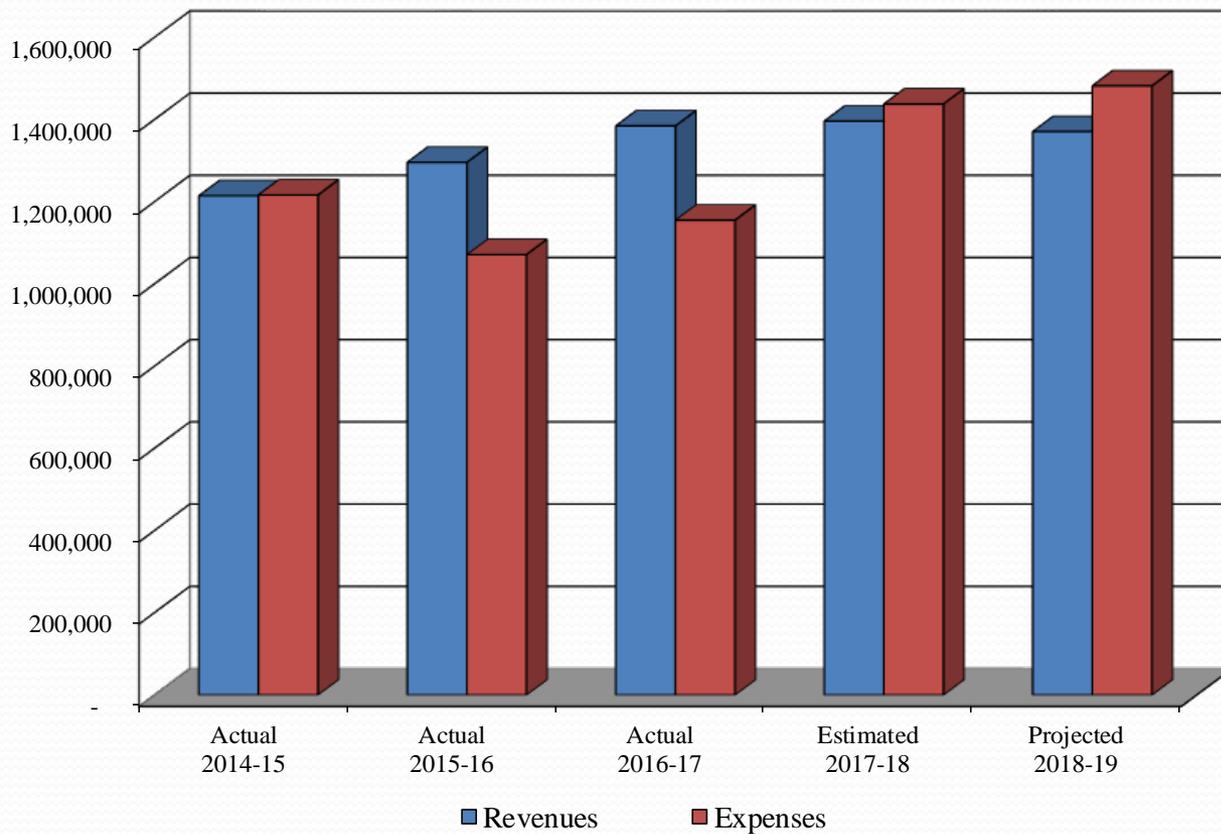
Airport Fund Comparison Revenues vs. Expenses





La Porte Area Water Authority Comparison

Revenues vs. Expenses





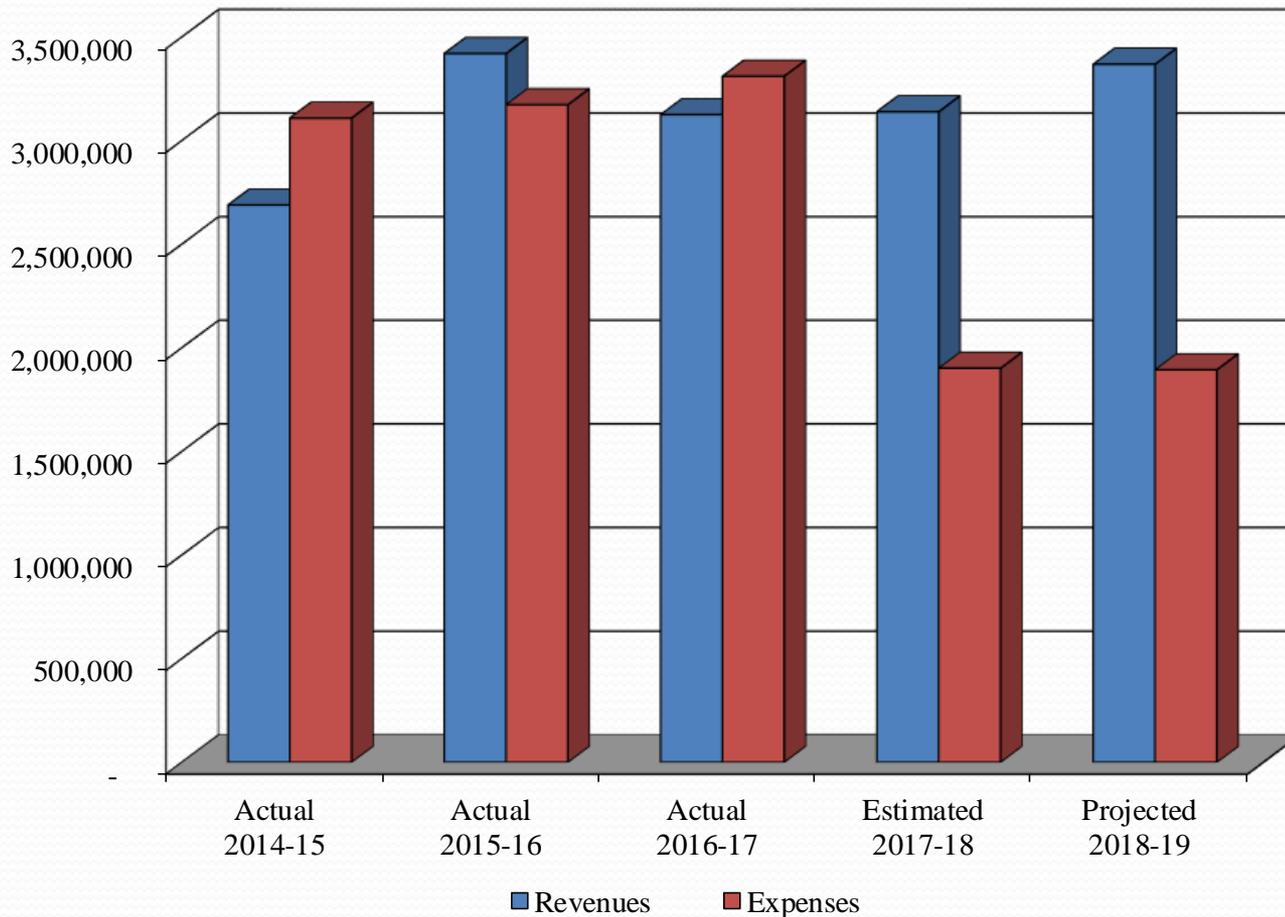
Internal Service Funds

- Motor Pool Fund
 - Maintenance
 - Replacement
- Insurance Fund
 - Employee Health Services
 - Risk Division
- Technology Fund
 - Replacement



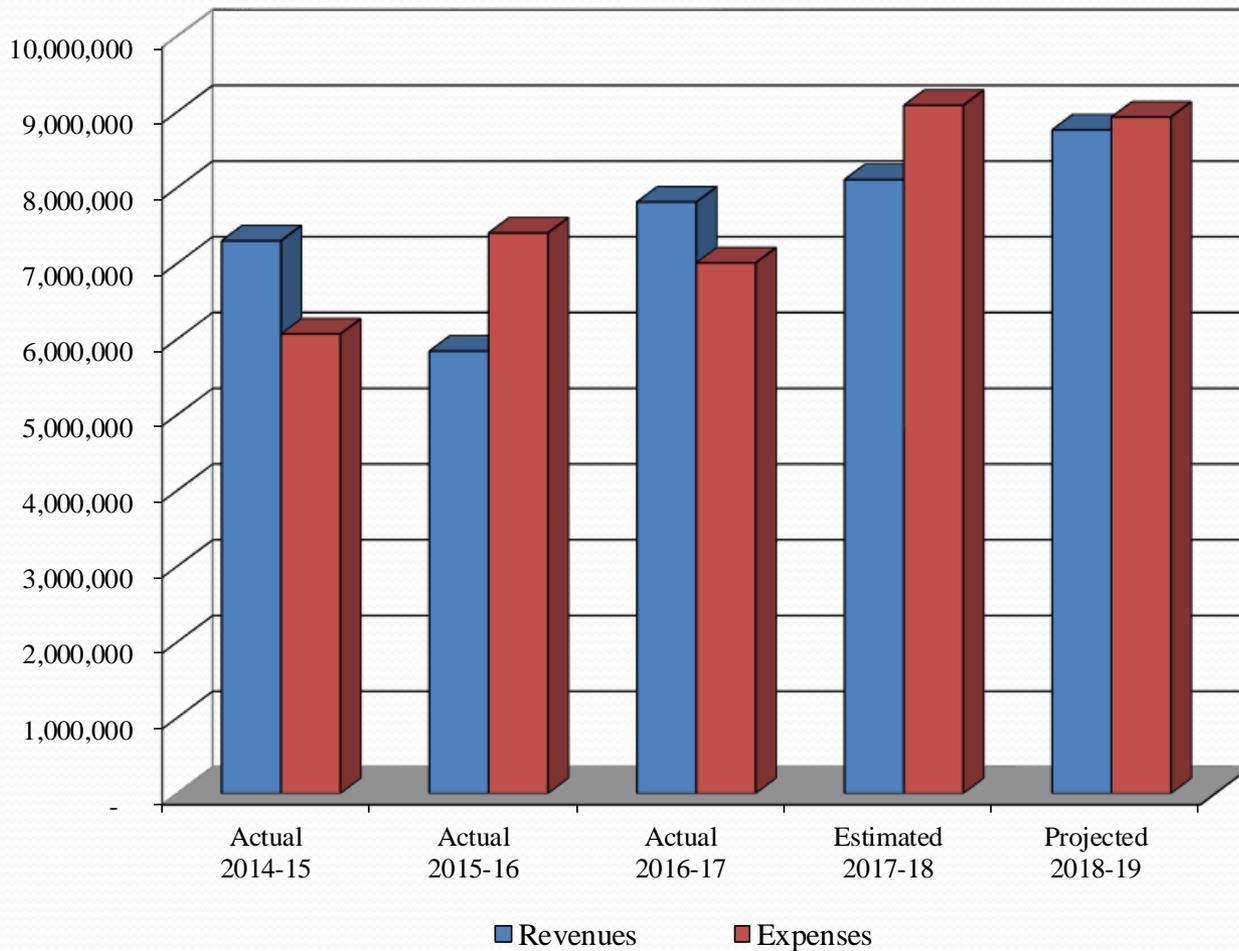
Motor Pool Fund Comparison

Revenues vs. Expenses





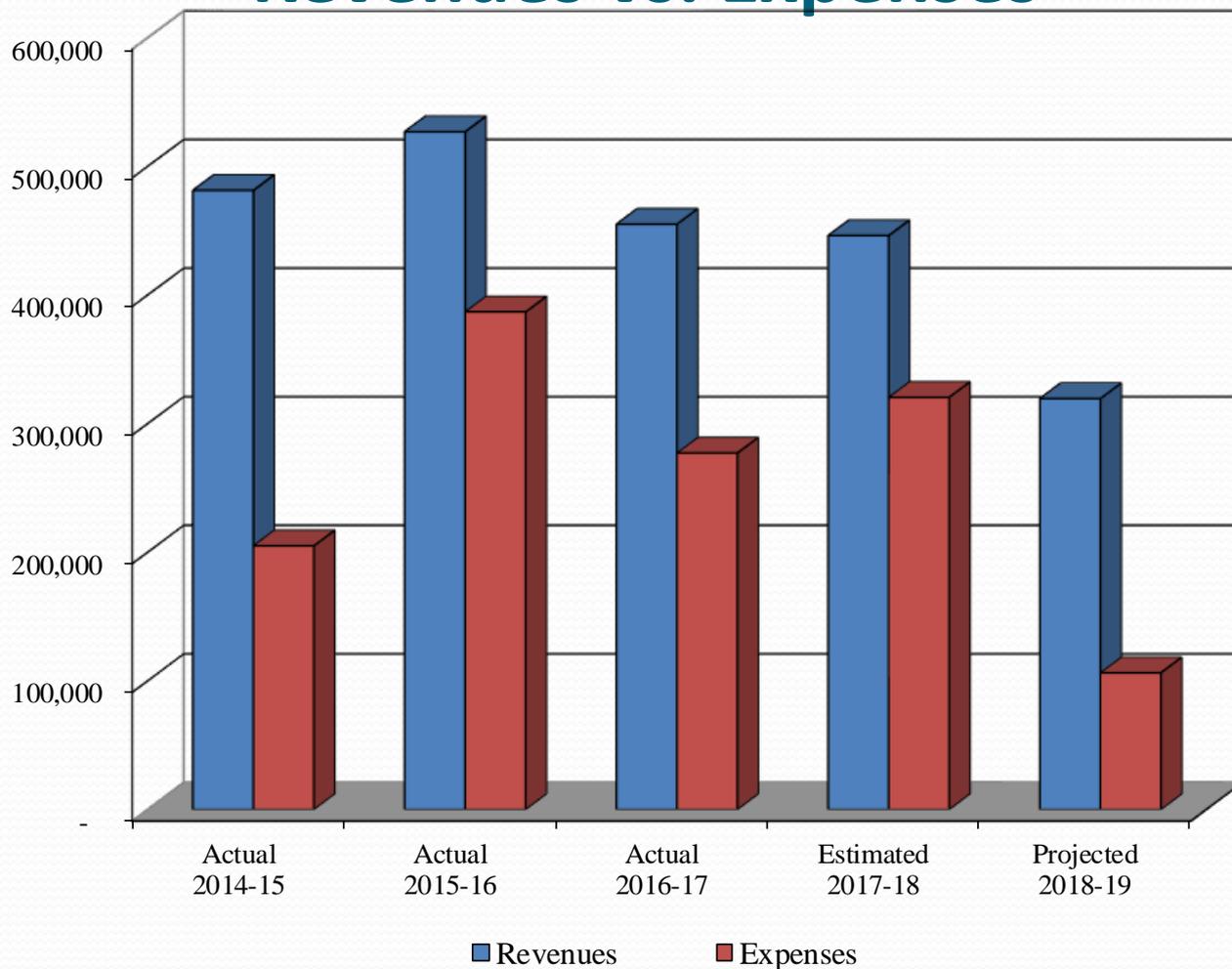
Insurance Fund Comparison Revenues vs. Expenses





Technology Fund Comparison

Revenues vs. Expenses



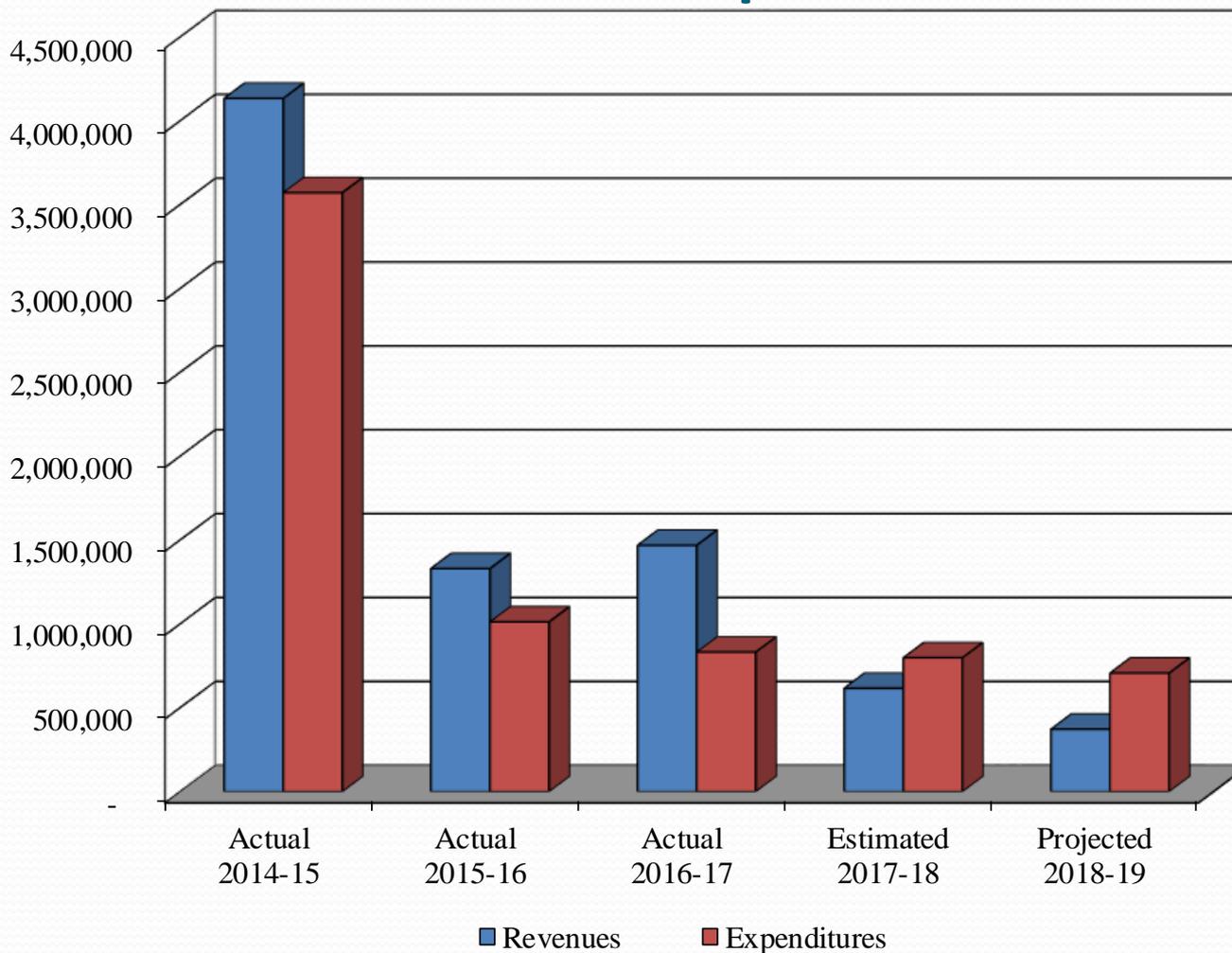


Special Revenue Funds

- Grant Fund
- Street Maintenance Sales Tax Fund
- Emergency Services District Fund
- Hotel/Motel Occupancy Tax
- Economic Development Fund
- TIRZ Fund



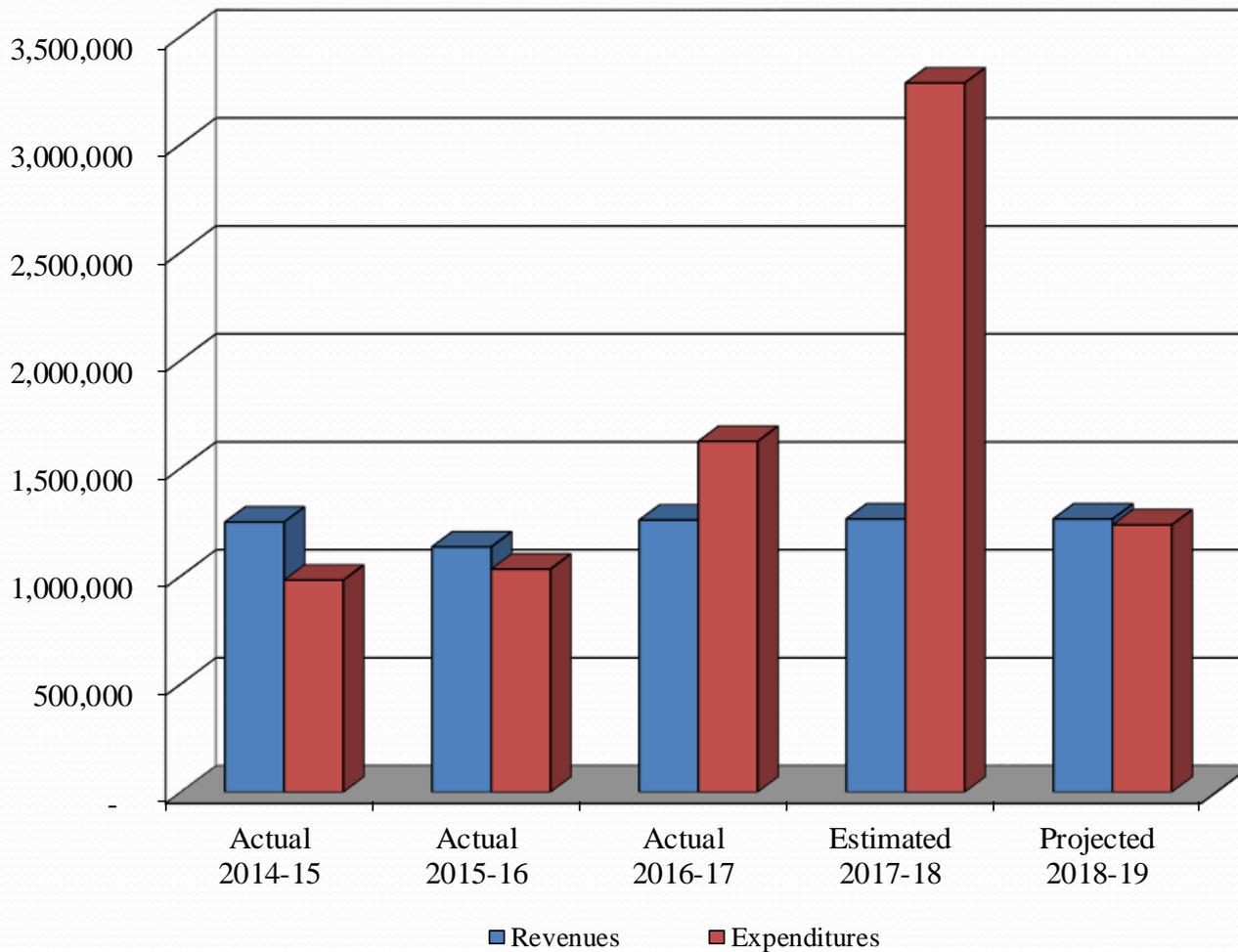
Grant Fund Comparison Revenues vs. Expenditures





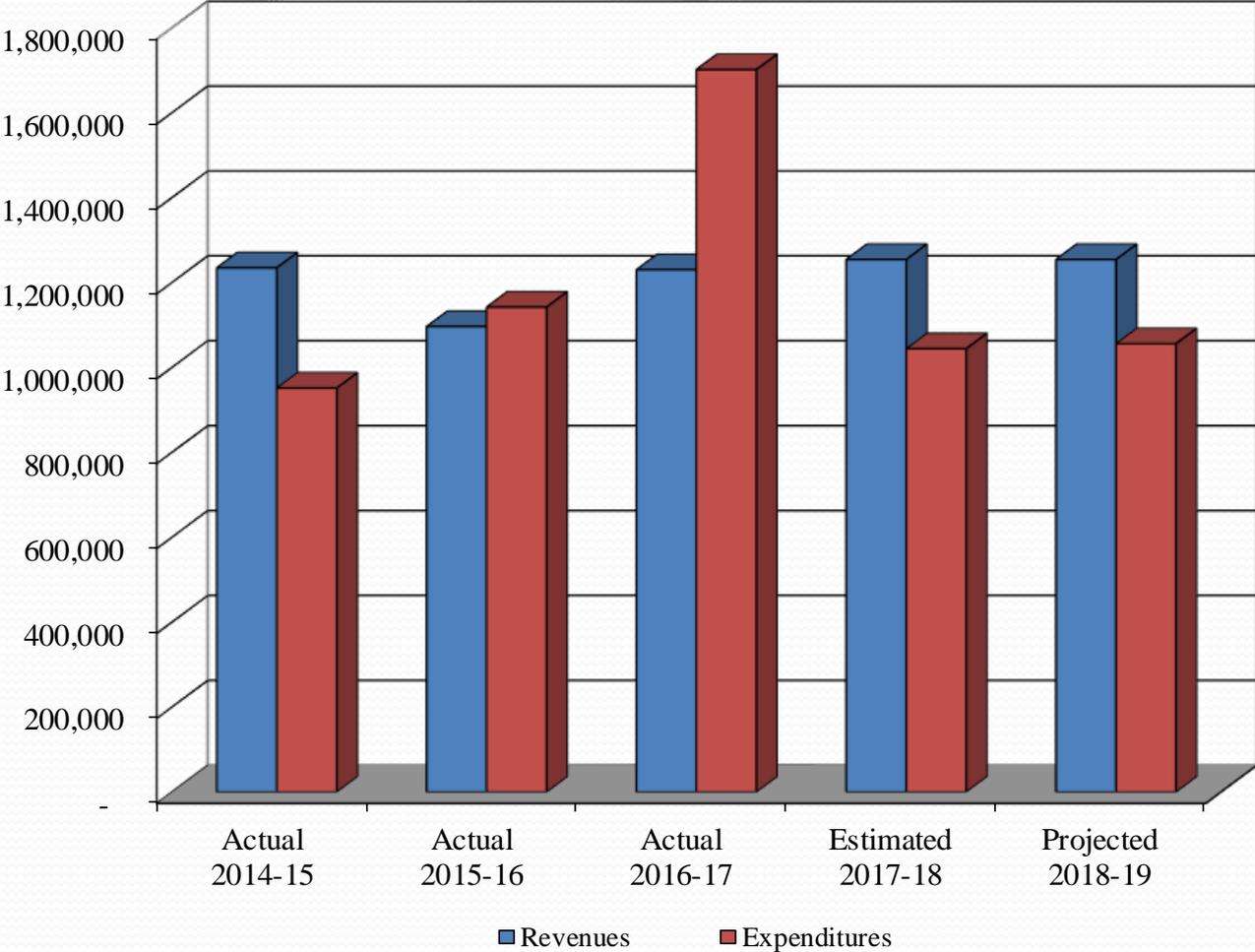
Street Maintenance Sales Tax Fund Comparison

Revenues vs. Expenditures



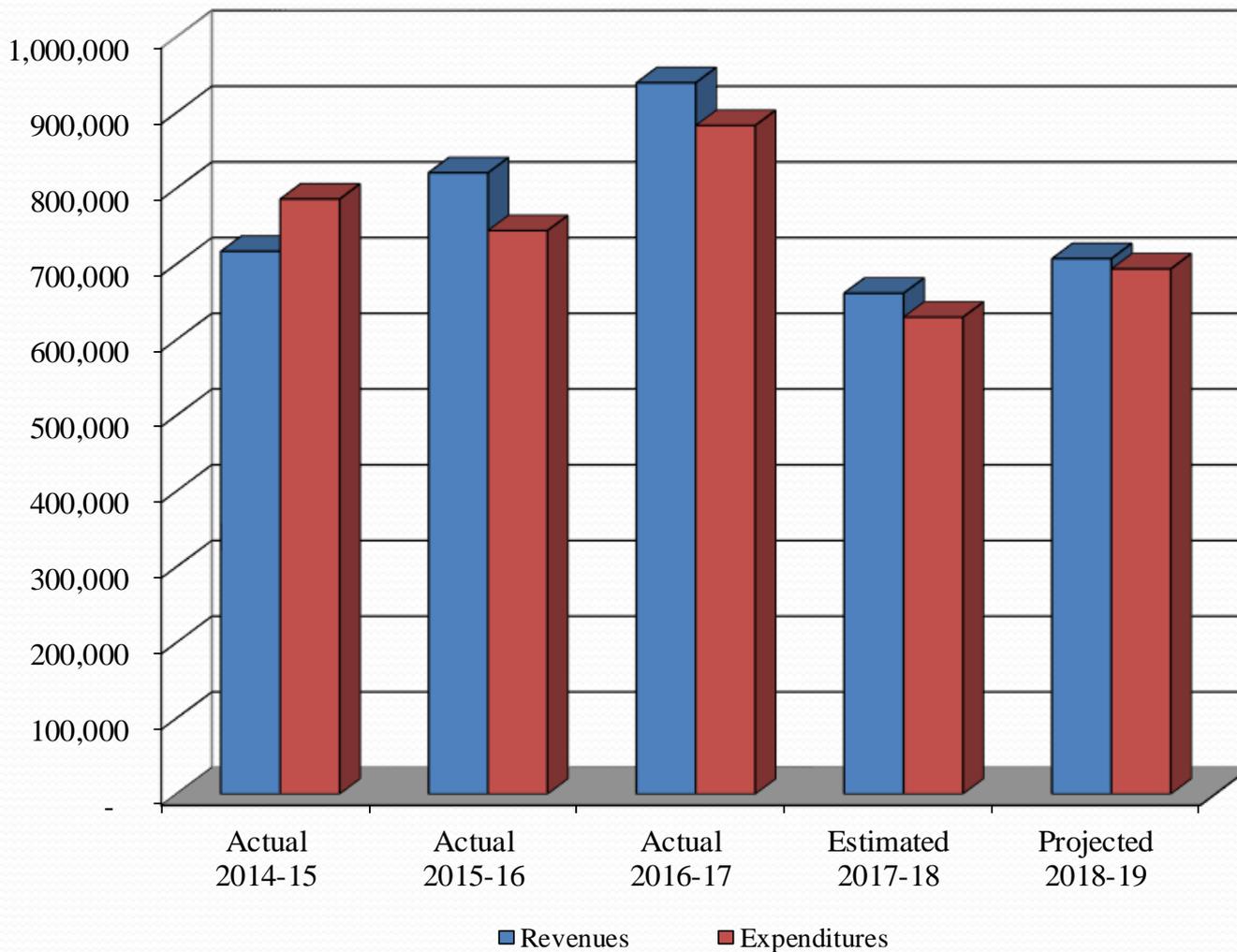


Emergency Services District Fund Comparison Revenues vs. Expenditures



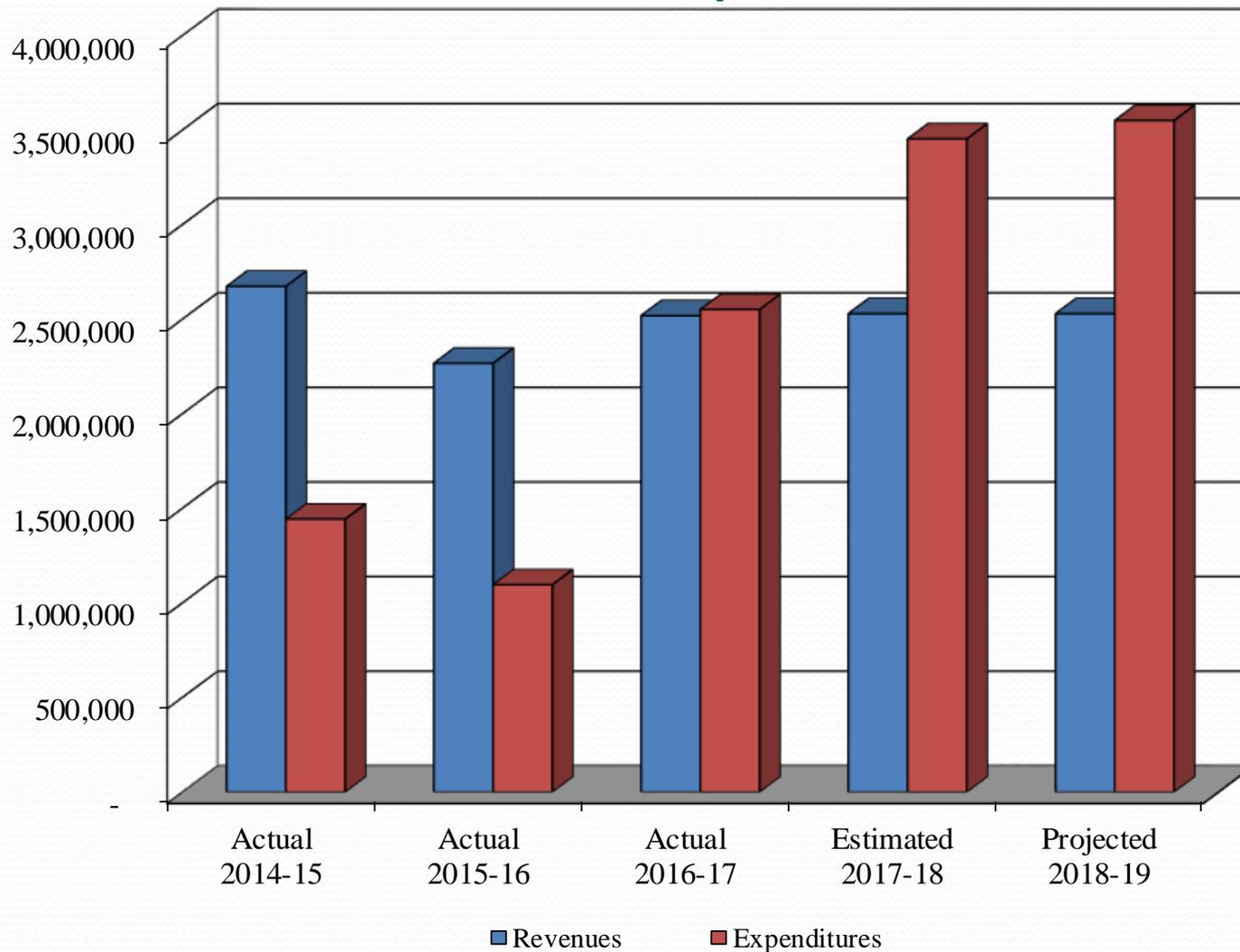


Hotel/Motel Occupancy Tax Fund Comparison Revenues vs. Expenditures





Economic Development Fund Comparison Revenues vs. Expenditures





Capital Improvement Projects Summary

(In millions)

	Working Capital 09/30/18	FY 18-19 Revenues	FY 18-19 Expenses	Working Capital 09/30/19
Capital Improvement:				
General CIP Fund	0.80	2.15	2.92	0.03
Utility CIP Fund	2.16	0.02	1.30	0.89
Sewer Rehabilitation	0.50	0.30	0.35	0.46
Drainage Improvement Fund	0.75	0.29	0.92	0.12
2010 C/O Bond Fund	0.76	-	0.75	0.01
2015 C/O Bond Fund	0.67	-	-	0.67
TWDB Loan Fund	9.88	-	9.50	0.38
Total Capital Improvement	15.53	2.76	15.74	2.56

*Includes CIP contingencies.



Fund Summaries

Fund	Total Proposed Expenditure
General Fund CIP (Fund 015)	\$3,569,000
Utility Fund CIP (Fund 003)	\$1,295,000
Airport Fund (010)	\$ 65,794
LP Area Water Authority Fund (016)	\$1,482,414
Sanitary Sewer Rehabilitation Fund (Fund 018)	\$ 350,000
Drainage Fund (Fund 019)	\$ 922,000
Street Maintenance Fund (Fund 033)	\$1,238,000
Drainage Bond Fund (Fund 050)	\$ 750,000
TWDB Loan Fund (Fund 052)	\$9,500,000
Total	\$19,328,697



General Fund CIP

Project Name	Project Budget
Decorative Broadway Lighting (EDC Funded)	\$ 480,700
Street Improvements – Texas Ave/E G St to Fairmont (EDC Funded)	355,000
Public Works Facility Assessment	65,000
Survey Equipment Replacement	30,000
Parking Lot at Fairmont Park	60,000
Playground at Wood Falls Park	70,300
East Main Street Sidewalk (Prefunding)	430,000
Wave Pool Renovations (Prefunding)	250,000
Private Fiber	650,000



General Fund CIP (cont'd)

Project Name	Project Budget
Habitat Homes	\$ 20,000
Clubhouse Repairs	28,000
Recreation & Fitness Center Remodel/Expansion (Prefunding)	1,000,000
Community Cooperation Program	30,000
Contingency	100,000
Total	\$3,569,000



Utility Fund CIP

Project Name	Project Budget
Replace Ground Tank – Collegeview Water Plant	\$ 350,000
Hillridge Pump Station Construction Phase I	250,000
Aerial Crossings	140,000
Exterior Cleaning of Lomax Water Tower	25,000
Pumps & Equipment Replacement	50,000
In-house Water Line Replacement	45,000
Valve Replacement Program (in-house)	25,000
Lift Station Improvements	45,000
Commercial Water Meter Replacement	15,000
Residential Water Meter Replacement Program	300,000
Contingency	50,000
Total	\$1,295,000



LPAWA CIP

Project Name	Project Budget
Valve Replacement	\$ 180,000
Total	\$ 180,000



Sewer Rehabilitation Fund CIP

Project Name	Project Budget
Sanitary Sewer Rehabilitation	\$ 350,000
Total	\$ 350,000



Drainage Fund CIP

Project Name	Project Budget
TV Inspection of Storm Sewer System	\$ 20,000
Drainage Materials (in-house)	60,000
Verify City Elevation Benchmarks	27,000
Brookglen Flooding Mitigation	275,000
Bayside Terrace Drainage Improvements Design	100,000
F101 Lomax Drainage Improvements Design	150,000
Battleground Estates Drainage Improvements Design	65,000
Bob's Gully Drainage Analysis	50,000
Little Cedar Bayou – Phase III	75,000
Contingency	100,000
Total	\$922,000



Street Maintenance Fund CIP

Project Name	Project Budget
Handicap Ramp and Sidewalk Replacement	\$ 200,000
Asphalt Street Surfacing	698,000
Concrete Repair (Small Sections)	200,000
Concrete Repair (Slab Jacking)	40,000
Street Repair Material (in-house)	50,000
Streets/Drainage Contingency	50,000
Total	\$1,238,000



Bond Fund CIP – 2010 CO

Project Name	Project Budget
Little Cedar Bayou – Phase III	\$ 750,000
Total	\$ 750,000



TWDB Loan Fund

Project Name	Project Budget
Lomax Lift Station Consolidation	\$ 9,500,000
Total	\$ 9,500,000



Debt Service Summary

(In millions)

	Working Capital 09/30/18	FY 18-19 Revenues	FY 18-19 Expenses	Working Capital 09/30/19
Debt Service:				
General	4.31	4.43	4.73	4.00
Total Debt Service	<u>4.31</u>	<u>4.43</u>	<u>4.73</u>	<u>4.00</u>

Questions?



REQUEST FOR CITY COUNCIL AGENDA ITEM

Agenda Date Requested: September 10, 2018

Requested By: Michael Dolby

Department: Finance

Report: Resolution: Ordinance:

Other: _____

Appropriation

Source of Funds: _____

Account Number: _____

Amount Budgeted: _____

Amount Requested: _____

Budgeted Item: YES NO

Attachments :

1. Ordinance

SUMMARY & RECOMMENDATIONS

The City Council held budget workshops on August 13 through August 14, 2018 to discuss proposed budgets for the fiscal year beginning October 1, 2018 and ending September 30, 2019.

The Summary of Funds, which is shown below, represents the result of the workshops held with City Council. All changes made by Council were incorporated into the various budgets.

	Revised 2018	Proposed 2019
General Fund	\$ 47,785,199	47,206,573
Grant Fund	1,152,584	707,388
Street Maintenance Sales Tax Fund	3,284,134	1,238,000
Emergency Services District Sales Tax Fund	1,044,118	1,056,052
Hotel/Motel Occupancy Tax	629,881	693,703
Economic Development Corporation	3,453,678	3,550,807
Tax Increment Reinvestment Zone	0	0
Utility	6,837,690	7,229,336
Airport	340,346	65,794
La Porte Area Water Authority	1,438,167	1,482,414
Motor Pool	1,901,735	1,894,274
Insurance Fund	9,086,320	8,931,625
Technology Fund	320,500	106,300
General Capital Improvement	7,613,856	3,569,000
Utility Capital Improvement	3,100,255	1,295,000
Sewer Rehabilitation Capital Improvement	330,700	350,000
Drainage Improvement Fund	519,350	922,000
2010 Certificates of Obligation Bond Fund	423,327	750,000
2015 Certificates of Obligation Bond Fund	3,912,405	0
TWDB Loan Fund	500,000	9,500,000
General Debt Service	4,526,924	4,733,822
Total of All Funds	\$98,201,169	\$95,282,088

Action Required of Council:

Adopt Ordinance approving Fiscal Year 2018-19 Proposed Budget.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date

ORDINANCE NO. _____

AN ORDINANCE APPROVING AND ADOPTING THE BUDGET FOR THE CITY OF LA PORTE, TEXAS, FOR THE PERIOD OF OCTOBER 1, 2018 THROUGH SEPTEMBER 30, 2019; FINDING THAT ALL THINGS REQUISITE AND NECESSARY HAVE BEEN DONE IN PREPARATION AND PRESENTMENT OF SAID BUDGET; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, the Charter of the City of La Porte, Texas, and the Statutes of the State of Texas, require that an annual budget be prepared and presented to the City Council of the City of La Porte, Texas, prior to the beginning of the fiscal year of said City, and that a public hearing be held prior to the adoption of said Budget; and

WHEREAS, the Budget for the fiscal year October 1, 2018, through September 30, 2019, has heretofore been presented to the City Council and due deliberation had thereon, was filed in the office of the City Secretary on July 23, 2018, and a public hearing scheduled for September 10, 2018 was duly advertised and held.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA PORTE:

SECTION 1: That the Budget for the City of La Porte, Texas, now before the said City Council for consideration, a complete copy of which is on file with the City Secretary and incorporated hereto by reference, is hereby adopted as the Budget for the said City of La Porte, Texas, for the period of October 1, 2018, through September 30, 2019.

SECTION 2: Be it FURTHER ORDAINED, that the said City Council finds that all things requisite and necessary to the adoption of said Budget have been performed as required by charter or statute.

SECTION 3: The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

SECTION 4: This Ordinance shall be in effect from and after its passage and approval.

PASSED AND APPROVED this the 10th day of September, 2018.

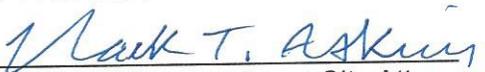
CITY OF LA PORTE, TEXAS

Louis R. Rigby, Mayor

ATTEST:

Patrice Fogarty, City Secretary

APPROVED:


Clark T. Askins, Assistant City Attorney

REQUEST FOR CITY COUNCIL AGENDA ITEM

<p>Agenda Date Requested <u>September 10, 2018</u></p> <p>Requested By: <u>Patrice Fogarty</u></p> <p>Department: <u>City Secretary</u></p> <p>Report <input checked="" type="checkbox"/> Resolution: <input type="checkbox"/> Ordinance: <input type="checkbox"/></p> <p>Exhibit: _____</p>	<p style="text-align: center;"><u>Appropriation</u></p> <p>Source of Funds: <u>N/A</u></p> <p>Account Number: <u>N/A</u></p> <p>Amount Budgeted: <u>N/A</u></p> <p>Amount Requested: <u>N/A</u></p> <p>Budgeted Item: YES NO</p>
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SUMMARY & RECOMMENDATION

The La Porte City Council is authorized to make appointments to boards, commissions and committees. Staff has determined the following individuals have agreed to volunteer for another term should Council wish to appoint them.

Regarding the **Airport Advisory Board** – Consider new appointments or reappointing Hector Villarreal to Position 4, and Van Wigginton to Position 5, to three-year terms expiring August 31, 2021.

Regarding the **Building Codes Appeals Board** – Consider new appointments or reappointing Paul Larson to Position 3, and Mike Mosteit to Position 4, to three-year terms expiring August 31, 2021, or until successors have been appointed and qualified.

Regarding the **Civil Service Commission** – Consider ratifying the City Manager’s appointment of Keith Trainer to a three-year term expiring August 31, 2021.

Regarding the **Chapter 172 Employee Retiree Insurance and Benefits Committee** – Consider new appointment or reappointing Aaron Corrales to Retiree Representative to a two-year term expiring August 31, 2020, or until a successor has been appointed and qualified.

Regarding the **Economic Alliance Houston Port Region** – Consider appointing Mayor Rigby as the City of La Porte’s designee to the Board of Directors of the Economic Alliance Houston Port Region. Each of the 11 member cities of the Economic Alliance Houston Port Region is represented on the Board by their Mayor. Mayor Rigby has been serving as the City’s representative and wants to continue.

Regarding the **Fire Code Review Committee** – Consider ratifying Jeff Brown as appointee of Council District 2, Andy Wilborn as appointee of Council District 3, Mark Follis as appointee of Council District 4, Jim Bridge as appointee of Council District 5, Bryan Moore as appointee of At Large A, and Lynn Green as appointee of the Mayor, to three-year terms expiring August 31, 2021, or until a successor has been appointed and qualified.

Regarding the **La Porte Fire Control Prevention & Emergency Medical Services District Board** – Consider new appointments or reappointing Danny Campise, Thomas Dye III, and Johnny Jones, to two-year terms expiring August 31, 2020, or until successors have been appointed and qualified.

Regarding the **La Porte Area Water Authority** – Consider new appointments or reappointing Stephanie Bellew to Member 4 position, and Ken Schlather to Member 5 position, to two-year terms expiring August 31, 2020, or until successors have been appointed and qualified.

Regarding the **La Porte Development Corporation Board (EDC)** – Consider new appointments or reappointing Danny Earp, Venessa Guerrero, and Shelley Fuller to two-year terms expiring August 31, 2020, or until successors have been appointed and qualified.

Regarding the **La Porte Tax Reinvestment Zone Number One (TIRZ 1)** – Consider new appointments or reappointing Barry Beasley to Position 2, Horace Leopard to Position 4, J.J. Meza to Position 6, and Chester Pool to Position 7, to two-year terms expiring August 31, 2020, or until successors have been appointed and qualified.

FYI: TIRZ bylaws state if you are a Board member on the TIRZ, you are also a Board member on the Redevelopment Authority.

Regarding the **La Porte Redevelopment Authority** – Consider ratifying Mayor Rigby’s reappointment of Barry Beasley to Position 2, Horace Leopard to Position 4, J.J. Meza to Position 6, Chester Pool to Position 7, and appointment of David Janda, LPISD’s appointee, to two-year terms expiring August 31, 2020, or until successors have been appointed and qualified. (Harris County’s appointment position is vacant at this time.)

FYI: While the ISD and County must appoint their representative to a position on the TIRZ Board, the Mayor must appoint all members (including Harris County’s and LPISD’s) to the La Porte Redevelopment Authority, with the consent and approval of City Council.

On the TIRZ Board, the City has the first 6 appointments, and other taxing authorities get the other three. On the Redevelopment Authority, the City appoints all members.

Regarding the **Planning and Zoning Commission** – Consider new appointments or reappointing Hal Lawler as the Mayor’s appointee, who shall also serve as chairman, Richard Warren as the Council District 2 appointee, and Jo Ann Pitzer as the Council District 3 appointee, to three-year terms expiring August 30, 2021, or until successors have been appointed and qualified.

Regarding the **Southeast Texas Housing Finance Corporation Board of Directors** – Consider new appointment or reappointing Betty Moore as a director to a one-year term expiring on August 31, 2019, or until a successor has been appointed and qualified.

Regarding the **Zoning Board of Adjustment** – Consider new appointments or reappointing Chester Pool to Position 1, Thomas Deen to Position 2, Rod Rothermel to Position 3, and Dennis Oian to Position 4, to two-year terms expiring August 31, 2020, or until successors have been appointed and qualified.

Additionally, the Alternate 1 position on the **Zoning Board of Adjustment** is vacant, leaving an unexpired term ending August 31, 2019. Consider an appointment to fill the vacancy through August 31, 2019, or until a successor has been appointed and qualified.

Action Required by Council:

Consider making appointments to various boards, committees and commissions.

Approved for City Council Agenda

Corby D. Alexander, City Manager

Date



**Council Agenda Item
September 10, 2018**

9 (a) Receive report of the Drainage and Flooding Committee Meeting – Councilmember Jay Martin

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Council Agenda Item September 10, 2018

10. ADMINISTRATIVE REPORTS

- Planning and Zoning Commission Meeting, Thursday, September 20, 2018
- Fiscal Affairs Committee Meeting, Monday, September 24, 2018
- La Porte Development Corporation Board Meeting, Monday, September 24, 2018
- City Council Meeting, Monday, September 24, 2018
- Zoning Board of Adjustment Meeting, Thursday, September 27, 2018

11. COUNCIL COMMENTS regarding matters appearing on the agenda; recognition of community members, city employees, and upcoming events; inquiry of staff regarding specific factual information or existing policies. Councilmembers Ojeda, J. Martin, K. Martin, Kaminski, Zemanek, Bentley, Engelken, Earp and Mayor Rigby

12. ADJOURN
