

City Council

200 North Brazil

Los Fresnos, TX 78566

Special Meeting

<http://citylf.cloudaccess.net/en/>

~ Agenda ~

Thursday, June 26, 2014

6:00 PM

City Hall

NOTICE IS HEREBY GIVEN THAT THE CITY COUNCIL OF THE CITY OF LOS FRESNOS PURSUANT TO CHAPTER 551, TITLE 5 OF THE TEXAS GOVERNMENT CODE, THE TEXAS OPEN MEETINGS ACT, WILL MEET ON THURSDAY, JUNE 26, 2014 AT 6:00 PM AT CITY HALL, 200 NORTH BRAZIL ST, LOS FRESNOS, TX 78566.

I. CALL TO ORDER

2. Invocation and Pledge of Allegiance
3. Visitor Remarks - To speak you must sign in prior to the meeting and you will have a limit of 3 minutes to speak.

II. CONSENT AGENDA:

1. Approval or rejection on Resolution approving cooperation with the Cities served by AEP TCC to review AEP Texas Central Company's requested approval of an adjustment to its Energy Efficiency Cost Recovery Factor; hiring legal and consulting services to negotiate with the Company and direct any necessary litigation and appeals; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to Legal Counsel.
2. Consideration and ACTION on a Resolution authorizing the execution and delivery of a Master Lease Agreement, Equipment Schedule No. 02, and Escrow Agreement, and related instruments, and determining other matters in connection therewith.

III. WORKSHOP

1. Workshop on financial planning

IV. ACTION ITEM:

1. Consideration and ACTION on financial planning for projects and funding alternatives.

V. CLOSED MEETING: DELIBERATION PURSUANT TO SECTION 551.072, TITLE 5 OF THE TEXAS GOVERNMENT CODE, THE TEXAS OPEN

**MEETINGS ACT, REGARDING THE PURCHASE, EXCHANGE, LEASE, O
VALUE OF REAL PROPERTY.**

**VI. OPEN MEETING - DELIBERATIN AND POSSIBLE ACTION REGARDING
THE PURCHASE, EXCHANGE, LEASE, OR VALUE OF REAL PROPERTY.**

VII. ADJOURNMENT

This is to certify that I, Pam Denny, posted this agenda on the front bulletin board of the City Hall on on or before 5:30 p.m. and it shall remain so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Pam Denny, City Secretary

Persons with any disabilities that would like to attend meetings must notify City Secretary 24 hours in advance so that the City can make arrangements for that disabled person.

City Council
200 North Brazil
Los Fresnos, TX 78566

Meeting: 06/26/14 06:00 PM
Department: City Secretary
Category: Report
Prepared By: Pam Denny
Initiator: Pam Denny
Sponsors:

SCHEDULED

ACTION ITEM (ID # 1055)

DOC ID: 1055

Invocation and Pledge of Allegiance

City Council
200 North Brazil
Los Fresnos, TX 78566

Meeting: 06/26/14 06:00 PM
Department: City Secretary
Category: Visitor Remarks
Prepared By: Pam Denny

Initiator: Pam Denny

Sponsors:

SCHEDULED

ACTION ITEM (ID # 1056)

DOC ID: 1056

Visitor Remarks - To speak you must sign in prior to the meeting and you will have a limit of 3 minutes to speak.

City Council
200 North Brazil
Los Fresnos, TX 78566

Meeting: 06/26/14 06:00 PM
Department: City Secretary
Category: Resolutions
Prepared By: Pam Denny
Initiator: Pam Denny
Sponsors:

SCHEDULED

ACTION ITEM (ID # 1057)

DOC ID: 1057

Approval or rejection on Resolution approving cooperation with the Cities served by AEP TCC to review AEP Texas Central Company's requested approval of an adjustment to its Energy Efficiency Cost Recovery Factor; hiring legal and consulting services to negotiate with the Company and direct any necessary litigation and appeals; finding that the meeting at which this resolution is passed is open to the public as required by law; requiring notice of this resolution to Legal Counsel.

RESOLUTION NO. 09-2014

**RESOLUTION OF THE CITY OF LOS FRESNOS
 APPROVING COOPERATION WITH THE CITIES
 SERVED BY AEP TCC TO REVIEW AEP TEXAS
 CENTRAL COMPANY'S REQUESTED APPROVAL OF AN
 ADJUSTMENT TO ITS ENERGY EFFICIENCY COST
 RECOVERY FACTOR; HIRING LEGAL AND
 CONSULTING SERVICES TO NEGOTIATE WITH THE
 COMPANY AND DIRECT ANY NECESSARY LITIGATION
 AND APPEALS; FINDING THAT THE MEETING AT
 WHICH THIS RESOLUTION IS PASSED IS OPEN TO THE
 PUBLIC AS REQUIRED BY LAW; REQUIRING NOTICE
 OF THIS RESOLUTION TO LEGAL COUNSEL.**

This Resolution was introduced and submitted to the City Council for passage and adoption. After presentation and discussion of the Resolution at a duly called meeting, including open meeting laws, a motion was made by _____ that the Resolution be finally passed and adopted in accordance with the City's Home Rule Charter. The motion was seconded by _____ and carried by the following vote:

Mayor Polo Narvaez	___ For	___ Against	___ Abstained
Mayor Pro-tem Yolanda H. Cruz	___ For	___ Against	___ Abstained
Councilmember Swain Real	___ For	___ Against	___ Abstained
Councilmember Javier Mendez	___ For	___ Against	___ Abstained
Councilmember Tom Jones	___ For	___ Against	___ Abstained
Councilmember Gary Minton	___ For	___ Against	___ Abstained

WHEREAS, on or about May 30, 2014, AEP Texas Central Company ("TCC" or "Company"), pursuant to the Public Utility Regulatory Act ("PURA") § 39.905 and Public Utility Commission of Texas ("Commission" or "PUC") Substantive Rule 25.181(f), filed with the Commission an application for a 2015 Energy Efficiency Cost Recovery Factor ("EECRF"), PUC Docket No. 42508; and

WHEREAS, the City of Los Fresnos will cooperate with similarly situated city members and other city participants located within the TCC service area in conducting a review of the Company's application and to hire and direct legal counsel and consultants and to prepare a common response and to negotiate with the Company and direct any necessary litigation; and

WHEREAS, working with the Cities Served by AEP TCC ("Steering Committee") to review the rates charged by TCC allows members to accomplish more collectively than each city could do acting alone; and

Attachment: resolution on aep (1057 : Resolution on AEP)

WHEREAS, the Steering Committee has a history of participation in PUC dockets and projects, as well as court proceedings, affecting transmission and distribution utility rates in TCC's service area to protect the interests of municipalities and electric customers residing within municipal boundaries; and

WHEREAS, PURA § 33.023 provides that costs incurred by cities in ratemaking activities are to be reimbursed by the regulated utility.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOS FRESNOS, TEXAS:

1. That the City is authorized to participate in the Steering Committee in PUC Docket No. 42508.

2. That subject to the right to terminate employment at any time, the City of Los Fresnos hereby authorizes the hiring of the law firm of Lloyd Gosselink and consultants to negotiate with the Company, make recommendations to the City regarding reasonable rates, and to direct any necessary administrative proceedings or court litigation associated with an appeal of this application filed with the PUC.

3. That the City's reasonable rate case expenses shall be reimbursed by TCC.

4. That it is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

5. A copy of this Resolution shall be sent to Chris Brewster, Counsel to the Steering Committee, at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Suite 1900, Austin, Texas 78701.

PASSED AND APPROVED this the 26th day of June, 2014.

Polo Narvaez, Mayor
City of Los Fresnos

ATTEST:

Pam Denny, City Secretary

Attachment: resolution on aep (1057 : Resolution on AEP)

M E M O R A N D U M

TO: Cities Served by AEP Texas Central Company

FROM: Chris Brewster and Eileen McPhee Keiffer

DATE: June 5, 2014

RE: Energy Efficiency Cost Recovery Factor Application of AEP TCC

On May 30, AEP Texas Central Company ("TCC") filed its 2015 Energy Efficiency Cost Recovery Factor ("EECRF") application. Pursuant to Public Utility Commission ("PUC" or "Commission") rules, TCC is required to annually apply no later than June 1 of every year to adjust the EECRF in order to reflect changes in program costs and bonuses and to minimize any over- or under-collection of energy efficiency costs resulting from the use of the EECRF.

Last year in Docket No. 41538, the Commission authorized TCC to adjust its 2014 EECRF to recover \$9,404,060. In this filing, TCC is seeking to adjust its EECRF to collect \$10,497,555 for five components: (1) \$7,228,897 in energy efficiency program costs projected to be incurred in 2015; (2) a refund of \$1,715,578 for over-recovery of costs in 2013; (3) \$313,133 representing the estimated evaluation, measurement and verification ("EM&V") costs projected to be incurred in 2014; (4) \$4,653,891 representing the 2013 performance bonus for achieving demand and energy savings that exceeded its minimum goal to be achieved in 2013; and (5) \$17,212 in 2013 EECRF rate case expenses. TCC's energy efficiency goal for 2014 is a demand reduction of 12.93 MW.

Although you may receive a copy of the application in the mail or from your local TCC representative, cities do not have jurisdiction over this matter and are not legally required to take action. However, the Commission's decision on TCC's EECRF will impact your rates and the rates of your citizens. If approved, the monthly impact on residential customers will be \$0.000710 per kWh each month. The PUC has previously determined that this is a ratemaking proceeding; therefore, the law allows for your city to be reimbursed for the reasonable cost of the services associated with reviewing the application. Under the Commission's rule, the cities' expenses associated with participation in this proceeding will be reimbursed in next year's EECRF proceeding. Accordingly, there is no direct cost to your city for participation in this proceeding.

We would like to schedule a conference call to discuss preliminary issues on Monday, June 9 at 3 p.m. The phone number to call is 1-888-599-1357, conference bridge 8531.

While no council action is required on this matter, and you may send me an email authorizing us to include your city in the coalition that will participate in this case, we recognize that some councils may prefer (or require) formal action to join the group. Accordingly, we have attached a model resolution and staff report to this effect.

Please feel free to contact me at (512) 322-5831 or cbrewster@lglawfirm if you have questions or concerns.

Attachment: resolution on aep (1057 : Resolution on AEP)

MODEL STAFF REPORT

PURPOSE

AEP Texas Central Company (“TCC” or “Company”) filed an application on or about May 30, 2014 with the Public Utility Commission of Texas (“PUC” or “Commission”), seeking to adjust its 2015 Energy Efficiency Cost Recovery Factor (“EECRF”). Pursuant to Commission rules, TCC is required to annually apply no later than June 1 of every year to adjust its EECRF in order to reflect changes in program costs and bonuses and to minimize any over- or under-collection of energy efficiency costs resulting from the use of the EECRF.

Last year in Docket No. 41538, the Commission authorized TCC to adjust its 2014 EECRF to recover \$9,404,060. In this filing, TCC is seeking to adjust its EECRF to collect \$10,497,555 for five components: (1) \$7,228,897 in energy efficiency program costs projected to be incurred in 2015; (2) a refund of \$1,715,578 for over-recovery of costs in 2013; (3) \$313,133 representing the estimated evaluation, measurement and verification (“EM&V”) costs projected to be incurred in 2014; (4) \$4,653,891 representing the 2013 performance bonus for achieving demand and energy savings that exceeded its minimum goal to be achieved in 2013; and (5) \$17,212 in 2013 EECRF rate case expenses.

The resolution authorizes the City to join with the Cities Served by AEP TCC (“Steering Committee”) to evaluate the filing, determine whether the filing complies with law, and if lawful, to determine what further strategy, including settlement, to pursue.

DISCUSSION

City groups have long participated in ratemaking proceedings before the PUC, the Courts, and the Legislature on electric utility regulation matters. Participation in a city group such as this Steering Committee allows cities to advocate for the public interest and accomplish more collectively than each city could on its own.

Explanation of “Be It Resolved” Paragraphs:

Section 1. This section authorizes the City to participate in the Steering Committee as a party in the Company’s EECRF filing, PUC Docket No. 42508.

Section 2. This section authorizes the hiring of Lloyd Gosselink and consultants to review the filing, negotiate with the Company, and make recommendations to the City regarding reasonable rates. Additionally, it authorizes the Steering Committee to direct any necessary administrative proceedings or court litigation associated with an appeal of this application filed with the PUC.

Section 3. The Company will reimburse the Steering Committee for its reasonable rate case expenses. Legal counsel and consultants of the Steering Committee will submit monthly invoices that will be forwarded to TCC for reimbursement. No individual city incurs liability for payment of rate case expenses by adopting this resolution.

Attachment: resolution on aep (1057 : Resolution on AEP)

Section 4. This section merely recites that the resolution was passed at a meeting that was open to the public and that the consideration of the resolution was properly noticed.

Section 5. This section provides that the Steering Committee counsel will be notified of the City's action by sending a copy of the approved and signed resolution to certain designated individuals.

City Council
200 North Brazil
Los Fresnos, TX 78566

Meeting: 06/26/14 06:00 PM
Department: City Secretary
Category: Resolutions
Prepared By: Pam Denny
Initiator: Pam Denny
Sponsors:

SCHEDULED

ACTION ITEM (ID # 1052)

DOC ID: 1052

Consideration and ACTION on a Resolution authorizing the execution and delivery of a Master Lease Agreement, Equipment Schedule No. 02, and Escrow Agreement, and related instruments, and determining other matters in connection therewith.

RESOLUTION NO. 08-2014**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A MASTER LEASE AGREEMENT, EQUIPMENT SCHEDULE NO. 02, AN ESCROW AGREEMENT, AND RELATED INSTRUMENTS, AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.**

This Resolution was introduced and submitted to the City Council for passage and adoption. After presentation and discussion of the Resolution, at a duly called meeting and including open meeting laws, a motion was made by _____ that the Resolution be finally passed and adopted in accordance with the City's Home Rule Charter. The motion was seconded by _____ and carried by the following vote:

Mayor Polo Narvaez	<input type="checkbox"/> For	<input type="checkbox"/> Against	<input type="checkbox"/> Abstained
Mayor Pro-tem Yolanda H. Cruz	<input type="checkbox"/> For	<input type="checkbox"/> Against	<input type="checkbox"/> Abstained
Councilmember Swain Real	<input type="checkbox"/> For	<input type="checkbox"/> Against	<input type="checkbox"/> Abstained
Councilmember Javier Mendez	<input type="checkbox"/> For	<input type="checkbox"/> Against	<input type="checkbox"/> Abstained
Councilmember Tom Jones	<input type="checkbox"/> For	<input type="checkbox"/> Against	<input type="checkbox"/> Abstained
Councilmember Gary Minton	<input type="checkbox"/> For	<input type="checkbox"/> Against	<input type="checkbox"/> Abstained

WHEREAS, the governing body of **City of Los Fresnos, TX** ("Lessee") desires to obtain certain equipment (the "Equipment") described in Equipment Schedule No. 02 to the Master Lease Agreement (Collectively, the "Lease") with **SunTrust Equipment Finance & Leasing Corp.**, ("Lessor") and Lessee, the form of which has been available for review by the governing body of Lessee prior to this meeting; and

WHEREAS, the Equipment is essential for the Lessee to perform its governmental functions; and

WHEREAS, the funds made available under the Lease will be deposited with **SunTrust Bank** ("Escrow Agent") pursuant to an Escrow Agreement between Lessor, Lessee and the Escrow Agent (the "Escrow Agreement") and will be applied to the acquisition of the Equipment in accordance with said Escrow Agreement; and

WHEREAS, Lessee has satisfied the legal requirements, including those relating to any applicable public bidding requirements, to arrange for the acquisition of the Equipment; and the execution and delivery of the Lease and the Escrow Agreement; and

WHEREAS, Lessee proposes to enter into the Lease with **SunTrust Equipment Finance & Leasing Corp.**, and the Escrow Agreement with Lessor and Escrow Agent substantially in the forms presented to this meeting.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOS FRESNOS, TEXAS AS FOLLOWS:

Section 1. It is hereby found and determined that the terms of the Lease and the Escrow Agreement (Collectively, the “Financing Documents”) in substantially the forms presented to this meeting and incorporated in this resolution are in the best interests of Lessee for the acquisition of the Equipment.

Section 2. The Financing Documents and the acquisition and financing of the Equipment under the terms and conditions as described in the Financing Documents are hereby approved. The **City Manager** of Lessee and any other officer of Lessee who shall have power to execute contracts on behalf of Lessee be, and each of them hereby is, authorized to execute, acknowledge and deliver the Financing Documents with any changes, insertions and omissions therein as may be approved by the officers who execute the Financing Documents, such approval to be conclusively evidenced by such execution and delivery of the Financing Documents. The **City Secretary** of the Lessee and any other officer of Lessee who shall have power to do so be, and each of them hereby is, authorized to affix the official seal of Lessee to the Financing Documents and attest the same.

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

Section 4. Pursuant to Section 265(b) of the Internal Revenue Code of 1986, as amended (the “Code”), Lessee hereby specifically designates the Lease as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code.

Section 5. This resolution shall take effect immediately.

PASSED AND APPROVED this 26th day of June, 2014.

Polo Narvaez, Mayor

ATTEST:

Pam Denny, City Secretary

Lease Date: _____

EXHIBIT A**EQUIPMENT SCHEDULE NO. 02
TO LEASE NO. 08690**

The following Equipment comprises an Equipment Group which is the subject of the Master Lease Agreement dated as August 31, 2012 (the "Agreement") between the undersigned Lessor and Lessee. The Agreement is incorporated herein in its entirety, and Lessee hereby reaffirms each of its representations, warranties and covenants contained in the Agreement. Lessee warrants that no Non-Appropriation and no Event of Default, or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default, has occurred under the Agreement. An Acceptance Certificate and Payment Schedule are attached to this Equipment Schedule and by reference are made a part hereof. The terms capitalized in this Equipment Schedule but not defined herein shall have the meanings assigned to them in the Agreement.

EQUIPMENT GROUP

The cost of the Equipment Group to be funded by Lessee under this Lease is **\$114,750.00** (the "Acquisition Cost"). The Equipment Group consists of the following Equipment which has been or shall be purchased from the Vendor(s) named below for the prices set forth below:

Tymco Street Sweeper, Model 435

The Equipment Group is or will be located at the following address(es). Prior to relocation of the Equipment Group or any portion thereof during the Lease Term, Lessee will provide written notice to Lessor:

Warehouse, 909 South Nogal, Los Fresnos, TX 78566**CITY OF LOS FRESNOS, TX,**

Lessee

**SUNTRUST EQUIPMENT FINANCE
& LEASING CORP.,**

Lessor

By: _____

Name: Mark W. Milum

Title: City Manager

Date: _____

Address: 200 N. Brazil
Los Fresnos, TX 78566

Telephone: 956/233-5768

Facsimile:

By: _____

Name:

Title:

Date: _____

Address: 300 East Joppa Road, 7th Floor
Towson, MD 21286

Telephone:

Facsimile:

Attachment: resolution on financing of street sweeper (1052 : Resolution for SunTrust Equipment Finance & Leasing)

Lease No.: 08690
Equipment Schedule: 02

ACCEPTANCE CERTIFICATE

I, the undersigned, hereby certify that I am the duly qualified and acting officer of Lessee identified below and, with respect to the above referenced Equipment Schedule and Lease, that:

1. The Equipment described below has been delivered and installed in accordance with Lessee's specifications, is in good working order and is fully operational and has been fully accepted by Lessee on or before the date indicated below:

2. Attached are (a) evidence of insurance with respect to the Equipment in compliance with Article VII of the Agreement; (b) Vendor invoice(s) and/or bill(s) of sale relating to the Equipment, and if such invoices have been paid by Lessee, evidence of payment thereof (evidence of official intent to reimburse such payment as required by the Code having been delivered separately by Lessee); and (c) financing statements executed by Lessee as debtor and/or the original certificate of title or manufacturer's certificate of origin and title application, if any, for any Equipment which is subject to certificate of title laws.

3. Rental Payments shall be due and payable by Lessee on the dates and in the amounts indicated on the Payment Schedule attached to the Equipment Schedule. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Lease during the current Fiscal Year of Lessee. Such moneys will be applied in payment of all such Rental Payments due and payable during such current Fiscal Year. Lessee anticipates that sufficient funds shall be available to make all Rental Payments due in subsequent Fiscal Years.

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

5. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Lease) exists at the date hereof

6. **Final Acceptance Certificate.** This Acceptance Certificate constitutes final acceptance of all of the Equipment identified in the Equipment Schedule described above. Lessee certifies that upon payment in accordance with paragraph 4 above, or direction to Escrow Agent (if applicable) to make payment, Lessor shall have fully and satisfactorily performed all of its covenants and obligations under the Lease. [CHECK BOX IF APPLICABLE.]

CITY OF LOS FRESNOS, TX,
Lessee

By: _____
Name: Mark W. Milum
Title: City Manager
Date: _____

Lease Number: 08690
Equipment Schedule: 02

PAYMENT SCHEDULE

The Funding Date with respect to the above referenced Equipment Group shall be June 30, 2014. Lessor shall retain any interest or income accruing between the Funding Date and the date on which interest begins to accrue in accordance with the Payment Schedule more fully set forth below. The annual Interest rate applicable to the Equipment Group shall be 1.95%. The first Rental Payment is due on October 15, 2014 and subsequent payments are due annually as set forth below.

<u>Payment Number</u>	<u>Payment Date</u>	<u>Payment Amount</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Prepayment Amount*</u>
					115,897.50
1	10/15/14	23,988.86	23,334.89	653.97	92,329.26
2	10/15/15	23,988.86	22,190.25	1,798.61	69,917.11
3	10/15/16	23,988.86	22,626.85	1,362.01	47,063.99
4	10/15/17	23,988.86	23,072.03	916.83	23,761.24
5	10/15/18	23,988.86	23,525.98	462.88	-
Total		119,944.30	114,750.00	5,194.30	

CITY OF LOS FRESNOS, TX,
Lessee

By: _____
Name: Mark W. Milum
Title: City Manager
Date: _____

* After payment of Rental Payment due on such date.

EXHIBIT B-1

[Escrow]

Lease Number: 08690
Equipment Schedule: 02**TAX AGREEMENT AND ARBITRAGE CERTIFICATE**

This **TAX AGREEMENT AND ARBITRAGE CERTIFICATE** (this "Certificate") is executed and delivered by **CITY OF LOS FRESNOS, TX**, ("Lessee") in favor of **SUNTRUST EQUIPMENT FINANCE & LEASING CORP.** and its successors and assigns ("Lessor") in connection with that certain Master Lease Agreement dated as of August 31, 2012 (the "Agreement") and the Equipment Schedule referenced above (the "Equipment Schedule"), each by and between Lessor and Lessee. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

Section 1. In General.

1.1. This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee as to future events regarding the financing of certain equipment (the "Equipment") to be acquired by Lessor and leased to Lessee pursuant to and in accordance with the Agreement and the Equipment Schedule (together with all related documents executed pursuant thereto and contemporaneously herewith, the "Financing Documents"). As described in the Financing Documents, Lessor shall apply **\$114,750.00** (the "Principal Amount") toward the acquisition of the Equipment and Lessee shall make Rental Payments under the terms and conditions as set forth in the Financing Documents.

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

1.3. The Financing Documents are being entered into for the purpose of providing funds for financing the cost of acquiring, equipping and installing the Equipment which is essential to the governmental functions of Lessee, which Equipment is described in the Equipment Schedule. The Principal Amount will be deposited in escrow by Lessor on the date of issuance of the Financing Documents and held by **SUNTRUST BANK**, as escrow agent ("Escrow Agent") pending acquisition of the Equipment under the terms of that certain Escrow Agreement dated as of _____, (the "Escrow Agreement"), by and between Lessor, Lessee and Escrow Agent.

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

1.5. Lessee has not issued, and reasonably anticipates that it and its subordinate entities, if any, will not issue, tax-exempt obligations (including the Lease) in the amount of more than \$10,000,000 during the current calendar year. Lessee hereby designates the Lease as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code and agrees that it and its subordinate entities, if any, will not designate more than \$10,000,000 of their obligations as "qualified tax-exempt obligations" during the current calendar year.

Section 2. Non-Arbitrage Certifications.

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

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

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

2.4. No portion of the Principal Amount is being used by Lessee to acquire investments which produce a yield materially higher than the yield realized by Lessor from Rental Payments received under the Financing Documents. As used in this certificate, the term "yield" means yield computed by the actuarial method using a 360-day year and semi-annual compounding, resulting in a discount rate which, when used in computing the present worth of all payments of principal and interest to be paid on an obligation, produces an amount equal to the issue price, fair market value, present value or purchase price thereof, as applicable, and is determined in all respects in accordance with Section 148 of the Code.

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

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

Section 3. Disbursement of Funds; Reimbursement to Lessee.

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

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

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

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

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

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

4.3. (a) Lessee covenants and agrees that it will rebate an amount equal to excess earnings on the Principal Amount deposited under the Escrow Agreement to the Internal Revenue Service if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations and maintain the records required by and otherwise comply with the regulations applicable thereto. Lessee reasonably expects to cause the Equipment to be acquired by _____.

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

[(c) Lessee hereby covenants that (i) Lessee is a governmental unit with general tax powers; (ii) the Lease is not a "private activity bond" under Section 141 of the Code; (iii) at least ninety-five percent (95%) of the Principal Amount is used for the governmental activities of Lessee; and (iv) the aggregate principal amount of all tax-exempt obligations (including the Lease) issued by Lessee and its subordinate entities, if any, during the current calendar year is not reasonably expected to exceed \$5,000,000. Accordingly, the rebate requirements of Section 148(f) of the Code are treated as being met, in lieu of the spending exceptions set forth in paragraph (b) above.]¹

Section 5. Escrow Account.

The Financing Documents provide that the monies deposited in escrow shall be invested until payments to the vendor(s) or manufacturer(s) of the Equipment are due. Lessee will ensure that such investment will not result in Lessee's obligations under the Financing Documents being treated as an "arbitrage bond" within the meaning of Section 148(a) of the Internal Revenue Code of 1986, as amended (the "Code"), respectively. Any monies which are earned from the investment of these funds shall be labeled as interest earned. All such monies will be disbursed on or promptly after the date that Lessee accepts the Equipment.

Section 6. No Private Use; No Consumer Loan.

6.1. Lessee will not exceed the private use restrictions set forth in Section 141 of the Code. Specifically, Lessee will not permit more than

¹ Not applicable to all transactions; see amount limitation.

10% of the Principal Amount to be used for a Private Business Use (as defined herein) if, in addition, the payment of more than ten percent (10%) of the Principal Amount plus interest earned thereon is, directly or indirectly, secured by (i) any interest in property used or to be used for a Private Business Use or (ii) any interest in payments in respect of such property or derived from any payment in respect of property or borrowed money used or to be used for a Private Business Use.

In addition, if both (A) more than five percent (5%) of the Principal Amount is used as described above with respect to Private Business Use and (B) more than five percent (5%) of the Principal Amount plus interest earned thereon is secured by Private Business Use property or payments as described above, then the excess over such five percent (5%) (the "Excess Private Use Portion") will be used for a Private Business Use related to the governmental use of the Equipment. Any such Excess Private Use Portion of the Principal Amount will not exceed the portion of the Principal Amount used for the governmental use of the particular project to which such Excess Private Use Portion is related. For purposes of this paragraph 6.1, "Private Business Use" means use of bond proceeds or bond financed-property directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and excluding use as a member of the general public.

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

Section 7. No Federal Guarantee.

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

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

Section 8. Post-Issuance Compliance.

8.1 In the event an action takes place (or is anticipated to take place) that will cause the Equipment not to be used for qualified uses under Section 141 of the Code, Lessee will consult with bond counsel as soon as practicable about taking remedial action as described in Treasury Regulation Section 1.141-12. Lessee will take all actions necessary to ensure that the "nonqualified bonds" (as defined in Treasury Regulation Section 1.141-12) are properly remediated in accordance with the requirements of the Treasury Regulations. Lessee is familiar with the Internal Revenue Service's Voluntary Compliance Agreement Program pursuant to which issuers of tax-exempt debt may voluntarily resolve violations of the Code and applicable Treasury Regulations on behalf of the holders of such debt or themselves through closing agreements with the Internal Revenue Service.

8.2. Lessee will actively monitor the requirements of the Code and the Treasury Regulations (a) set forth in this certificate and confirm that such requirements are met no less than once per year; (b) related to the allocation and accounting of proceeds to capital projects and will maintain a list that specifies the allocation of proceeds of the Lease to the costs of the Equipment; (b) related to arbitrage limitations, including yield restriction, rebate requirements and the investment of gross proceeds of the Lease. The offices within Lessee that are currently responsible for such monitoring are the administration and accounting departments.

Section 9. Miscellaneous.

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

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

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

IN WITNESS WHEREOF, this Tax Agreement and Arbitrage Certificate has been executed on behalf of Lessee as of

CITY OF LOS FRESNOS, TX,
Lessee

By: _____
Name: Mark W. Milum
Title: City Manager
Date: _____

Attachment: resolution on financing of street sweeper (1052 : Resolution for SunTrust Equipment Finance & Leasing)

City Council
200 North Brazil
Los Fresnos, TX 78566

Meeting: 06/26/14 06:00 PM
Department: City Secretary
Category: Workshop
Prepared By: Pam Denny
Initiator: Pam Denny
Sponsors:

SCHEDULED

ACTION ITEM (ID # 1053)

DOC ID: 1053

Workshop on financial planning

City Council
200 North Brazil
Los Fresnos, TX 78566

Meeting: 06/26/14 06:00 PM
Department: City Secretary
Category: Agreement
Prepared By: Pam Denny
Initiator: Pam Denny
Sponsors:

SCHEDULED

ACTION ITEM (ID # 1054)

DOC ID: 1054

Consideration and ACTION on financial planning for projects and funding alternatives.