

**City Council  
Agenda Memo**



**TO:** Larry D. Gilley, City Manager  
**FROM:** David A. Vela, Deputy City Manager  
**SUBJECT:** Lease Agreement – City of Abilene and *Frontier Texas!*

**City Council  
Meeting Date: Apr 10, 2014**

**GENERAL INFORMATION**

The purpose of this agreement is to renew the lease of the City of Abilene owned facility at 625 N 1<sup>st</sup> Street, to *Frontier Texas!*, a western heritage center that allows visitors to relive the Old West through state-of-the-art technology. *Frontier Texas!* also serves as the official visitor center for Abilene and the Texas Forts Trail Region.

**STAFF RECOMMENDATION**

Staff recommends approval of the lease agreement.

**ATTACHMENTS**

Lease agreement

<p>Prepared by: Name: <u>David A. Vela</u> Title: <u>Deputy City Manager</u></p>	<p>Item No. <u>6.1</u></p>	<p>Disposition by City Council <input type="checkbox"/> Approved Ord/Res# <input type="checkbox"/> Denied <input type="checkbox"/> Other _____ _____ City Secretary</p>
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THE STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF TAYLOR §

## LEASE AGREEMENT

The City of Abilene ("City"), and Frontier Texas!, Inc. ("Lessee"), evidenced by their Signatures do hereby confirm the terms and conditions of this Lease Agreement ("Lease").

### ARTICLE I PURPOSE

Section 1.01: Lease Purpose. This Lease is made and entered to be effective the 1st day of April, 2014, for the purpose of leasing that certain property with the improvements thereon, hereinafter called the "leased premises" as more particularly described in Exhibit A (attached). The leased premises shall support the educational and cultural undertaking of Frontier Texas!, Inc. and provide for the general moral, intellectual and physical improvement, and welfare of the people of the City and the surrounding region by providing a historical, cultural, and educational perspective of life on the Texas frontier.

### ARTICLE II EXHIBITS

Section 2.01: Premise Exhibits. For the initial ten (10) years of this Lease, all Exhibits presently existing or hereafter constructed on the leased premises shall remain the property of Lessee and Lessee shall have the duty to repair, maintain, and replace such Exhibits. If prior to the expiration of the initial term Lessee dissolves, vacates, or abandons the leased premises, or the Lease is terminated due to Lessee's default, all Exhibits shall become a part of the leased premises with title to such Exhibits vesting in the City, with the exception of the three sculptural exhibits "Crossing the Catclaw" (lobby cattle drive bronze), "Testing the Texas Wind" (bronze buffalo on west side of the facility), and "Giant Skull" (iron buffalo skull on the parade grounds), which will remain the property of Lessee. At the end of this ten (10) year term, this Article shall be renegotiated upon mutually agreed upon terms and conditions, it being the express intent of the

parties that Frontier Texas!, Inc. continue to operate and exist for the intended purposes for which it was created, as set forth in Article I.

### **ARTICLE III RENTAL FEES**

Section 3.01: Payment. Lessee agrees to pay City, located at 555 Walnut Street, Abilene, Taylor County, Texas, as rent for the leased premises: the sum of One Dollar and no cents (\$1.00) per year of Lease term payable on the day this Lease becomes effective and on the anniversary of such date every year thereafter.

### **ARTICLE IV TERM**

Section 4.01: Initial Term. The initial term of this Lease shall be for ten (10) years commencing on the date this Lease is effective, April 1, 2014, unless sooner agreed upon by both parties and thereafter shall continue on a yearly basis, unless otherwise agreed to in writing by both parties.

Section 4.02: Amendments. Any amendments or modifications to the Lease will be in writing and executed by both parties.

### **ARTICLE V GENERAL TERMS AND CONDITIONS**

Section 5.01: Maintenance.

- a) Lessee shall be responsible at the date of commencement for routine clean up, maintenance, repair or replacement of the grounds, including the sidewalks, parking lots, signs, banners, light poles, and plaza area, keeping them free of trash and debris.
- b) The City shall be responsible for the routine maintenance of the landscaping and greenery on the leased premises, further defined as mowing, edging, and watering of outdoor greenery. Any replacement of such greenery, including trees or shrubs, shall be at the City's discretion.
- c) Lessee shall be responsible at the date of commencement for routine maintenance and repairs and replacement of the interior improvements, subject to (b) above, of the leased premises including, but not limited to: interior electrical power (including electrical switches), outlets and lamp replacements, floor coverings, interior walls and wall coverings, all interior plumbing, pipes and conduits, all fixtures, doors, door locks, seasonal

maintenance, maintenance of building equipment such as interior heating, ventilating and air conditioning equipment, cleaning, and trash service.

- d) Lessee shall be responsible throughout the term of this Lease for routine maintenance and repairs, at its own risk and expense, of the roof, foundation, exterior plumbing lines, exterior electrical power, fire protection, sprinkler system, and structural soundness of the walls and the leased premises as a whole, subject to (b) above.

Section 5.02: Improvements and Alterations.

- a) Any improvements, additions or utility installations in or about the leased premises that Lessee shall desire to make that would substantially alter the structure, would require consent of the City and shall be presented to City in written form, with proposed detailed plans. If City gives its consent, the consent shall be deemed conditioned upon Lessee acquiring a permit from appropriate governmental agencies, furnishing of a copy thereof to City prior to the commencement of the work, and compliance by Lessee of all conditions of said permit in a prompt and expeditious manner.
- b) Unless City requires their removal, all alterations, improvements, additions, and utility installations permanently attached to the building shall, upon termination of this Lease by lapse of time or otherwise, become the property of City and remain upon and be surrendered with the leased premises, except as otherwise provided in Section 2.01. These items include, but are not limited to: lighting, plumbing, and mechanical equipment and controls, "built-in" type cabinets and room/space dividers, electrical/water/gas service, fire sprinklers, and connections of all equipment furnished by Lessee.
- c) Subject to the other provisions of (b) above, Lessee's equipment, other than those associated with the Premise Exhibits, Section 2.01, and other than those which are affixed to the leased premises so that they cannot be removed without material damage to the leased premises, shall remain the property of the Lessee and may be removed by Lessee at the termination of this Lease. However, before Lessee removes any equipment, City shall have the first option to purchase any items it chooses at the fair market value as it exists on that date. These items include, but are not limited to: inventory, office supplies, shelving and storage equipment, furniture, interior/exterior signage, and decorative accessories. At the termination of this Lease, Lessee shall deliver said leased premises and property to City in as good order and condition as they were at time of acceptance, provided; however, that reasonable use, ordinary wear and tear, or depreciation are excepted.

Section 5.03: Force Majeure. Neither the City nor Lessee shall be deemed in default hereunder if either party is prevented from performing any of its obligations, other than the payment of rentals, fees, and charges hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, acts of sabotage or any other circumstances for which it is not responsible or which are not within its control.

Section 5.04: Right to Inspect Books. Lessee shall provide City or its auditors, or their duly authorized representatives, access and the right to examine, copy, or reproduce all records relating to this Lease as long as any City funding is being provided to Lessee. Lessee shall retain all records and supporting documents for a minimum of three (3) years after termination of any term of this Lease.

## ARTICLE VI SPECIAL TERMS AND CONDITIONS

Section 6.01: Notices. Any notices to be given by the parties shall be addressed to the party at the address shown:

City: City Manager  
City of Abilene  
P.O. Box60  
Abilene, Texas 79604-0060

Lessee: Executive Director  
Frontier Texas!, Inc.  
625 North 1st  
Abilene, Texas 79601

Section 6.02: Utilities. Lessee shall pay all gas, electrical, water, garbage, and sewer charges and any other utilities together with taxes thereon during the term of this Lease or any renewal thereof. City will pay for water used in outdoor landscape maintenance, which is separately metered.

Section 6.03: Insurance. During the term of this Lease, and renewal or extension thereof agreed by City and Lessee, Lessee shall maintain property insurance equal to or better than that which covers perils insured under the Insurances Services Office, Inc. (ISO) broad causes of loss form, on all risks coverage basis (CP 10 20 and as revised or amended), on the building, contents, Exhibits, and its improvements. Property insurance shall have limits equal to the replacement cost of the building, contents, Exhibits, and improvements.

- a) Lessee agrees to waive its right of recovery from City for any and all losses or damage to building and improvements, which are covered by ISO broad causes of loss form, and/or Boiler and Machinery coverage.
- b) Lessee agrees to provide comprehensive general (public) liability insurance of Two Million Dollars and no cents (\$2,000,000.00) per occurrence for bodily injury and property damage for any single occurrence, and Four Million Dollars and no cents (\$4,000,000.00) in the aggregate, automobile liability for all owned and scheduled autos with a combined single limit of Two Million Dollars and no cents (\$2,000,000.00), and

inland marine coverage on all contents, electrical equipment and fine arts limits of Two Million Dollars and no cents (\$2,000,000.00).

- c) All such policies of insurance shall name City of Abilene as "additional insured", "loss payee", or as "insured" as its interest may appear; shall provide for a waiver of subrogation; and shall provide thirty (30) days advance written notice to City of any cancellation or material change thereto.
- d) Lessee does herewith and hereby release and relieve the City, and waive its claim of recovery for loss or damage to property arising out of or incidental to fire, lightning, and other perils that are covered in and by Lessee's property insurance policy, when such property is in, on, or about the leased premises or building to which the leased premises is attached. In the event of loss, damage, or destruction to any part or all of the leased premises caused by those perils insured under and all risk, ISO broad causes of loss form, so as to render such leased premises unfit for occupancy and normal uses, Lessee shall, with either funds from insurance coverage or its own funds and within a reasonable period of time, rebuild and restore the leased premises. Total expenditure of funds shall not exceed the Lessee's property insurance limits.

**Section 6.04: Indemnity. The Lessee agrees to indemnify and hold harmless and defend City, its officers, agents, and employees, from and against liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs, attorney's fees, and other reasonable costs arising out of or resulting from Lessee's activities conducted in connection with or incidental to this Lease and from any liability arising out of or resulting from intentional acts or negligence, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part upon the negligent or intentional acts or omissions of Lessee, including but not limited to its officers, agents, employees, subcontractors, licensees, invitee, and other persons.**

**Further, City assumes no responsibility or liability for harm, injury, or any damaging events which are directly or indirectly attributable to premise defects, real or alleged, on the leased premises or in improvements which may now exist or which may hereafter arise upon the leased premises, responsibility for any and all such defects being expressly assumed by Lessee. Lessee agrees that this indemnity provision shall apply to any and all claims, suits, demands, and/or actions based upon or arising from any such leased premises defects or conditions, including but not limited to any such claim asserted by or on behalf of Lessee, including but not limited to its officers, agents, employees, subcontractors, licensees, invitee, and other persons.**

**It is further agreed with respect to the above indemnity, that City and Lessee will provide each other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect the Lessee or City, and City shall have the right to compromise and defend the same to the extent of its own interests. It is agreed that this indemnity provision shall be considered an additional remedy for City and not an exclusive remedy.**

Section 6.05: Assignment/Encumbrances. Lessee shall not assign this Lease or sub-lease any of the demised leased premises without City's prior written approval. Any attempted assignment without approval from City shall be void, and shall constitute a breach of this Lease. Any conveyance of City's interest in this property, after the execution date of this Lease, shall include all rights owned hereunder including leasehold rights unless otherwise set out in writing. City shall provide a copy of any such conveyance to Lessee notifying Lessee of any change in ownership. Lessee may not encumber its leasehold estate or any interest in the buildings and improvements on the leased premises without the City's prior knowledge and written consent.

Section 6.06: City's Right to Inspect or Repair. Lessee agrees that City or its agents or other representatives shall have the right to enter the leased premises, or any part thereof, at all reasonable hours, for the purpose of examining and inspecting the leased premises. However, such entry shall be only with the prior notice and consent of Lessee. Lessee's consent shall be given for any reasonable time and extent of entry, subject to all applicable security requirements enforced by Lessee. City may show the same to prospective purchasers, lenders, or lessees, with prior notice to, and consent from, Lessee, such consent not being unreasonably withheld, and subject to the same security requirements enforced by Lessee.

Section 6.07: Compliance. Throughout the term of this Lease, and in the use and occupancy of said leased premises and leasehold rights, Lessee shall comply with its By-laws and Articles of Incorporation as well as all applicable local state, and federal laws.

Section 6.08: Taxes. During the primary term of this Lease, Lessee shall be responsible for paying, as they become due, the total property taxes assessed as to the leased premises, plus all of the tax attributed to Lessee's personal property on leased premises.

## **ARTICLE VII DEFAULT, REMEDIES, TERMINATION**

Section 7.01: Default by City of Abilene. City shall not be in default unless City fails to perform Lease obligations required of City within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to City, specifying wherein City has failed to perform such obligation provided; however, that if the nature of City's obligation is such that more than thirty (30) days are required for performance then City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

Section 7.02: Default by Lessee. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

- a) Lessee vacates or abandons the leased premises, other than as contemplated and/or allowed under this Lease.
- b) Lessee fails to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of ten (10) business days after written notice thereof from Lessor to Lessee.
- c) Lessee fails to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in paragraph two (2) above, where such failure shall continue for a period of thirty (30) days after written notice hereof from City to Lessee provided; however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.
- d)
  - (i) Lessee makes any general arrangement of assignment for the benefit of creditors;
  - (ii) Lessee becomes a "debtor" as defined in 11 U.S.C. 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days);
  - (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the leased premises described in this Lease where possession is not restored to Lessee within thirty (30) days; or
  - (iv) the attachment, execution, or other judicial seizure of substantially all of Lessee's assets located at the leased premises described in this Lease where such seizure is not discharged within thirty (30) days.

Provided, however, in the event that any provision of this section is contrary to any applicable law, such provision shall be of no force or effect.

Section 7.03: Remedies. In the event of any material default or breach by Lessee, City may at any time thereafter, with prior notice to Lessee and a reasonable opportunity to cure, and without limiting City in the exercise of any right or remedy which City may have by reason of such default or breach:

- a) Terminate Lessee's right to possession of the leased premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the leased premises to City. In such event, City shall be entitled to recover from Lessee all damages incurred by City by reason of Lessee's default including, but not limited to: the cost of recovering possession of the leased premises, reasonable attorney's fees, and returning the leased premises to the condition in which it was originally accepted with concession for the reasonable aging of improvements.
- b) Maintain Lessee's right to possession in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the leased premises. In such event, City shall be entitled to enforce all of City's rights' and remedies under this Lease, including the right to recover rent as it becomes due hereunder.



- c) Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the state of Texas. Unpaid installment of rent and other unpaid monetary obligations of Lessee under the terms of this Lease shall bear interest from the date due at the maximum rate then allowable by law.
- d) If during the term of this Lease, said leased premises or any portion thereof shall be condemned for any public purpose, either party hereto shall have the option of terminating and canceling this Lease upon thirty (30) days written notice to the other party of its election to do so.
- e) Failure of Lessee or City to insist in any one or more instances on a strict performance of any of the covenants of this Lease shall not be construed as a waiver or relinquishment of such covenants in future instances, but the same shall continue and remain in full force and effect.

**ARTICLE VIII  
MISCELLANEOUS**

Section 8.01: Entire Agreement. This Lease, which shall be executed in multiple copies (with each copy serving as an original document) shall constitute the sole agreement between Lessee and the City relating to the object of this Lease and correctly sets forth the complete rights, duties, and obligations of each party to the other as of its date. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Lease are of no force and effect.

Section 8.02: Venue. Venue shall lie in Taylor County, Abilene, Texas. This agreement shall be governed by Texas law.

Section 8.03: Severability. The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2014.

CITY:

LESSEE:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

APPROVED:

\_\_\_\_\_  
City Attorney

**EXHIBIT A**

Attached to and made a part of the Lease Agreement between the City of Abilene and Frontier Texas!, Inc.

DESCRIPTION OF LEASED PREMISES

[See attached.]

**EXHIBIT "A"**

**City of Abilene property  
(green)**

**Frontier Texas! Leased Area  
(yellow)**

**626 N. 1st St.**

**625 N. 1st St.**

