



**City Council Questions and Answers for  
Thursday, March 06, 2014**

These questions and answers are related to the  
Austin City Council meeting that will convene at 10:00 AM on  
Thursday, March 06, 2014 at Austin City Hall  
301 W. Second Street, Austin, TX



**Mayor Lee Leffingwell  
Mayor Pro Tem Sheryl Cole  
Council Member Chris Riley, Place 1  
Council Member Mike Martinez, Place 2  
Council Member Kathie Tovo, Place 3  
Council Member Laura Morrison, Place 4  
Council Member William Spelman, Place 5**

*The City Council Questions and Answers Report was derived from a need to provide City Council Members an opportunity to solicit clarifying information from City Departments as it relates to requests for council action. After a City Council Regular Meeting agenda has been published, Council Members will have the opportunity to ask questions of departments via the City Manager's Agenda Office. This process continues until 5:00 p.m. the Tuesday before the Council meeting. The final report is distributed at noon to City Council the Wednesday before the council meeting.*


## **QUESTIONS FROM COUNCIL**


1. Agenda Item # 12- Approve a resolution adopting the Austin Urban Forest Plan: a Master Plan for Public Properties as required under City Code Section 2-1-183(E).
  - a. QUESTION: On p. 63 it indicates that plan implementation must have measurable objectives. On P. 67 it states that 5 years after plan adoption, performance will be measured using the Annual Performance Report Card (Appendix A) that uses such measures as canopy cover, species, class and age distribution. Such measures seem to be outputs of data collection on the urban forest. 1) What baseline data will these be measured against in five years? 2) If citywide canopy cover data will be used for canopy goals, how will city-wide canopy data (which includes private trees) be meaningfully reflective of public tree care goals and actions? COUNCIL MEMBER TOVO
  - b. ANSWER- See attachment
2. Agenda Item # 21 - Approve a resolution directing the City Manager to conduct a stakeholder process to consider changes to the sidewalk café regulations, including associated fees, processes, and use of permits instead of license agreements, and bring a report outlining any changes and recommended code amendments back to Council within 90 days. (Notes: SPONSOR: Council Member Chris Riley CO 1: Mayor Pro Tem Sheryl Cole)
  - a. QUESTION: Please provide a summary of the differences between attaining and operating under a license agreement versus a permit. COUNCIL MEMBER MORRISON
  - b. ANSWER: Currently, license agreements for sidewalk cafés require: a survey; authorization of the owner of the real property (if different from the applicant); general commercial liability insurance; and appropriate signature authority. In addition, sidewalk cafés are reviewed by potentially affected City departments and franchise holders, including Austin Energy and Texas Gas Service. Upon approval by all parties, a license agreement document must be drafted and executed and the applicant must pay a fee based upon a percentage of the appraised value of the land. City staff will meet with stakeholders in the weeks to come to determine their concerns regarding the existing process and its requirements (outlined above). Thereafter, staff will improve the process where needed, and work with the Law Department to revise the sidewalk café regulations. One change to the process that will be considered is the use of a permit rather than a license agreement. Currently,

the City does not issue permits for sidewalk cafés. Further, it is undetermined at this time if permitting will be the recommended solution, and if so, what requirements will be a part of this new permitting process. In determining the requirements of any new or revised process, staff will consider advice from the Law Department as well as input from outside stakeholders. Sidewalk cafés are specifically addressed in Chapter 14-4 of the City Code. License agreements are addressed in Chapter 14-11 of the City Code.

3. AHFC Agenda Item # 1 - Authorize negotiation and execution of an assignment and assumption of indebtedness agreement with Fort Branch LLC to assume a loan originally made to Fort Branch Landing Limited Partnership, for the development of the Fort Branch at Truman's Landing Apartments located at 4300 Ed Bluestein Boulevard.
  - a. QUESTION: Please provide more backup information on this item. Why are we negotiating this agreement? Please provide more information about Truman's Landing Apartments, what an "Assignment and Assumption of Indebtedness Agreement is, and what the result of the agreement will be.  
COUNCIL MEMBER SPELMAN
  - b. ANSWER: See attachment

**END OF REPORT - ATTACHMENTS TO FOLLOW**

 *The City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.*

 *For assistance please call (512) 974-2210 OR (512) 974-2445 TDD.*



Item #12

March 6, 2014

#### Additional Answer Information

**QUESTION:** What baseline data will these be measured against in five years?

**ANSWER:** Implementation Action 1.1 on page 67 describes data collection efforts following Plan adoption. Data collection will focus on known gaps in existing datasets to improve data reliability and inform the development of Performance Report Card performance measures. Data collection will include tree inventories and GIS data, for the purposes of maintenance, planning, and canopy goal establishment. A joint data collection effort between the Urban Forestry Program and the City Arborist Office is planned to commence during the spring/summer of 2014, pending Austin Urban Forest Plan adoption. Completion of the baseline Performance Report Card is expected by the winter of 2014. The Performance Report Card, which is based on an internationally utilized system for measuring urban forest performance, will mirror as closely as possible the measures used in other municipalities so that ongoing benchmarking with Austin will be possible.

**QUESTION:** If citywide canopy cover data will be used for canopy goals, how will city-wide canopy data (which includes private trees) be meaningfully reflective of public tree care goals and actions?

**ANSWER:** The City of Austin contains two geographic data sets documenting tree canopy cover in 2006 and 2010 out to and beyond the City of Austin's 5 mile extraterritorial jurisdiction. These data sets can be manipulated so that only tree canopy falling within the City's jurisdictions will be analyzed. Likewise, the tree canopy data can be manipulated to show only tree canopy falling within public lands (i.e. City of Austin-owned land parcels, municipal parks, and transportation rights-of-ways), thus excluding private trees. Data collection planned for spring/summer of 2014 will include sampling to allow public and private trees to be considered separately.

Public tree care goals and actions are intended to be specific to each department through the Department Operational Plan. Policy element PCM-5 (pg. 81) states tree canopy goals should be identified "according to site, land use designation, and ecosystem capacity" allowing City departments to set goals catering to their respective operations and capacity for tree canopy.



## Council Question and Answer

Related To	AHFC Agenda Item #1	Meeting Date	March 6, 2014
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### Additional Answer Information

**QUESTION:** Please provide more information about Truman's Landing Apartments.

**ANSWER:** On September 7, 2000, the AHFC Board approved a resolution authorizing the negotiation and execution of a HOME loan in the amount not to exceed \$500,000 to Campbell-Hogue and Associates for development costs and fees for the development of the Fort Branch (at Truman's Landing) Apartments at 4200 Ed Bluestein Boulevard.

Campbell-Hogue and Associates constructed 250 units for a total project cost of over \$21 million. The AHFC loan provided for 20 assisted units with 4 units at 50% or below MFI and 16 units at 60% or below MFI. The original loan terms required repayment over 18 years with the first payment due 8/1/2002 and the final payment due on 12/1/2020. A subsequent amendment modified the terms to defer payment for one year and moved the maturity date to April 1 2020.

**QUESTION:** Why are we negotiating this agreement?

**ANSWER:** We are negotiating this agreement because Fort Branch (at Truman's Landing) Apartments has had difficulty making their loan payments. Payments were initially deferred via modification to the note, from October 1, 2011 to September 30, 2012 to allow Campbell-Hogue to recover from poor management by a professional property management company. Subsequent to the deferment period, the owners have actively sought buyers for the project.

**QUESTION:** What is an Assignment and Assumption of Indebtedness Agreement?

**ANSWER:** An Assignment and Assumption of Indebtedness transfers a loan from one party to another party. In this matter, the potential buyer of the property encumbered by an Austin Housing Finance Corporation deed of trust has agreed to assume the indebtedness of the current property owner/borrower under the Austin Housing Finance Corporation loan. Instead of terminating the old loan documents and executing new loan documents with the buyer, this document transfers the interest of borrower under the loan. This is important because a new deed of trust would be subordinate to any indebtedness or liens that were recorded subsequent to the date of the recording of the original deed of trust. This preserves the priority of the original deed of trust.

**QUESTION:** What will the result of the agreement be?

**ANSWER:** The Assignment and Assumption of Indebtedness will transfer the interest of Fort Branch Landing Limited Partnership as borrower under the December 13, 2000, Austin Housing Finance Corporation loan in the original principal amount of \$500,000 to Fort Branch, LLC. Fort Branch, LLC will assume all of Fort Branch Landing Limited Partnership's interests as borrower under the Housing Implementation Program Loan Agreement, Promissory Note, Deed of Trust, and Security Agreement. In the event that that there is a default under this loan in the future, AHFC will need to pursue any remedies against the new borrower, Fort Branch, LLC. The new agreement will also preserve 250 units as affordable units by the new buyer and follows this response.



## ASSIGNMENT AND ASSUMPTION OF INDEBTEDNESS

STATE OF TEXAS                   §  
  §           KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF TRAVIS           §

THIS ASSIGNMENT AND ASSUMPTION OF INDEBTEDNESS (hereinafter referred to as the "**Assignment**") is executed effective as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by Fort Branch Landing Limited Partnership, a Texas limited partnership (hereinafter referred to as the "**Assignor**"), to Fort Branch, LLC, a Delaware limited liability company (hereinafter referred to as the "**Assignee**"). Austin Housing Finance Corporation ("**AHFC**") enters into this Assignment solely to acknowledge its consent to the assumption of the Loan (as hereinafter defined) evidenced and secured by the Note (as hereinafter defined) and the Deed of Trust (as hereinafter defined) and the transfer of the real and personal property described in the Deed of Trust, the County UCC, and the State UCC (all as hereinafter defined)."

### **RECITALS**

A. The Assignor is the owner of the real property described on Exhibit A hereto, together with all fixtures and improvements situated thereon and all rights, titles, and interests appurtenant thereto.

B. The Assignor is the borrower under that certain Housing Implementation Program Loan Agreement dated as of December 13, 2000 (as it may be amended, the "**Loan Agreement**") with AHFC with regard to a loan from AHFC to Assignor in the original principal amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "**Loan**"). The Loan is evidenced by a Note (Secured by Deed of Trust and Security Agreement) dated of even date therewith (as it may be amended, the "**Note**"), payable by Assignor to AHFC. The Loan is secured by a Deed of Trust of even date therewith (as it may be amended, the "**Deed of Trust**"), by Assignor for the benefit of AHFC, which was filed in the Official Public Records of Travis County, Texas on December 13, 2000, File No. 2000197560; a Financing Statement (as it may be amended or extended, the "**County UCC**") executed by Assignor for the benefit of AHFC which was filed in the Official Public Records of Travis County, Texas, File No. 2000197557; and a Financing Statement (as it may be amended or extended, the "**State UCC**") executed by Assignor for the benefit of AHFC which was filed with the Secretary of State of Texas on December 13, 2000, File No. 00-641127. The Loan also calls for the Property to be restricted pursuant to a Restrictive Covenant Running with the Land dated as of December 13, 2000 (the "**Declaration**"), executed by Assignor and AHFC, which was filed in the Official Public Records of Travis County, Texas on December 13, 2000, File No. 2000197562. The Loan Agreement, Note, Deed of Trust, County UCC, State UCC, and Declaration are hereinafter referred to as the "**Loan Documents**".

C. Concurrently with the execution of this Assignment, Assignor is transferring the Property to Assignee.

D. The Assignor, as the borrower under the Note, desires to assign to the Assignee the Loan and all Loan Documents evidencing, securing or relating to the Loan, and all rights, obligations, and interests of the Assignor under the Loan Documents.

**NOW, THEREFORE**, know all men by these presents, that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereby agree as follows:

**1. Assignment and Assumption.** The Assignor does hereby sell, transfer, assign, convey, endorse and deliver unto Assignee the Loan and the Loan Documents, and the Assignee does hereby accept and agree to such assignment and assumes all rights, obligations, and interests of the Assignor with respect to the Loan and the Loan Documents, on the following terms and conditions:

(a) The Note and the Loan Documents have each been duly executed and delivered by the parties thereto.

(b) Assignor hereby represents that the Note and the Loan Documents are in full force and effect and that no event of default nor event or condition exists or existed which with notice or lapse of time or both could constitute a default under either the Note or the Loan Documents.

**2. Modifications.** All references in the Loan Documents to "Debtor," "Grantor," "Maker," "Borrower," or "Owner" shall hereinafter refer to Assignee. The notice address for Assignee in all Loan Documents shall be:

8149 Santa Monica Blvd. #298  
Los Angeles, California 90046  
Attn: Jason Post/Greg Ferkel  
jason@postinvestmentgroup.com  
greg@postinvestmentgroup.com

**3. Governing Law.** The law governing this secured transaction shall be laws of the State of Texas, exclusive of conflicts of laws principles.

**4. Counterparts.** This Assignment may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute but one instrument.

**5. Severability.** In case any one or more of the provisions contained in this Assignment for any reason are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof,

and this Assignment will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**6. Headings.** The subject headings contained in this Assignment are for reference purposes only and do not affect in any way the meaning or interpretation hereof.

**7. Successors and Assigns.** This Assignment shall be binding on the parties hereto, their heirs, successors and assigns.

**8. No Other Changes.** This Assignment shall not change or modify any other terms, conditions or covenants contained in the Loan Documents except as modified herein. The terms, conditions and covenants of the Loan Documents, as modified, are hereby ratified and confirmed and shall continue in full force and effect and Assignee agrees to be bound thereby.

**9. Renewal.** The Assignee hereby renews the liens, security interests and rights of any and all security for the indebtedness evidenced by the Note, including without limitation, the liens, security interests and rights of the Deed of Trust, County UCC, and State UCC, to secure payment of the Note and agrees that the assumption of the Loan shall in no manner affect or impair any of the rights, security interests or liens securing its payment, and that such rights, security interests and liens shall not in any manner be waived. All rights, security interests and liens securing payment of the Note are acknowledged by the Assignee to be valid and subsisting rights, liens and security interests against the Property.

[SIGNATURES ON FOLLOWING PAGES]



EXECUTED effective as of the date first set forth above.

ASSIGNOR:

Fort Branch Landing Limited Partnership,  
a Texas limited partnership

By: Fort Branch General, LLC,  
a Delaware limited liability company,  
its General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGEMENT

THE STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ [name], \_\_\_\_\_ [office] of Fort Branch General, LLC, a Delaware limited liability company, as general partner of Fort Branch Landing Limited Partnership, a Texas limited partnership, on behalf of said partnership.

\_\_\_\_\_  
Notary Public in and for  
the State of \_\_\_\_\_

ASSIGNEE:

FORT BRANCH, LLC,  
a Delaware limited liability company

By: Fort Branch MM, LLC,  
a Delaware limited liability company,  
its Managing Member

By: \_\_\_\_\_  
Jason Post, Manager

ACKNOWLEDGEMENT

THE STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014, by Jason Post, Manager of Fort Branch MM, LLC, a Delaware limited liability company, as managing member of Fort Branch, LLC, a Delaware limited company, on behalf of said limited liability company.

\_\_\_\_\_  
Notary Public in and for  
the State of \_\_\_\_\_

LENDER:

AUSTIN HOUSING FINANCE CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGEMENT

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF TRAVIS    §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_ [name], \_\_\_\_\_ [office] of Austin Housing Finance Corporation.

\_\_\_\_\_  
Notary Public in and for  
the State of Texas

Exhibit A

DRAFT by Owner Attorney; edited by AHFC Attorney