

AN ORDINANCE **72429**

APPROVING A 25 YEAR LICENSE AGREEMENT FOR A FEE OF \$500.00 BETWEEN THE CITY OF SAN ANTONIO AND THE FROST NATIONAL BANK OF SAN ANTONIO (UNIVERSITY BRANCH) TO ENCROACH ON CITY RIGHT-OF-WAY, SPECIFICALLY A DRAINAGE EASEMENT ON LOT 3, NEW CITY BLOCK 16072 LOCATED ADJACENT TO THE I.H. 10 ACCESS ROAD AND CASABELLA STREET, FOR THE PURPOSE OF INSTALLING AN AUTOMATED TELLER MACHINE (A.T.M.)

* * * *

WHEREAS, THE FROST NATIONAL BANK OF SAN ANTONIO (UNIVERSITY BRANCH), ("Petitioner"), has requested a License to encroach on City right-of-way, specifically a drainage easement on Lot 3, New City Block 16072, located adjacent to the I.H. 10 Access Road and Casabella Street, for the purpose of installing an automated teller machine (A.T.M.) within said right-of-way; and

WHEREAS, the CITY OF SAN ANTONIO has no objection thereto, all interested agencies having been canvassed and having placed certain conditions and specifications on the installation of said automated teller machine (A.T.M.) to which conditions and specifications PETITIONER has agreed; and

WHEREAS, the City Planning Commission has approved such License at its meeting on September 12, 1990; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. A License Agreement is hereby approved for 25 years between the CITY OF SAN ANTONIO, as LICENSOR, and THE FROST NATIONAL BANK OF SAN ANTONIO (UNIVERSITY BRANCH), as LICENSEE, for a License to encroach on City right-of-way, specifically a drainage easement on Lot 3, New City Block 16072 located adjacent to the I.H. 10 Access Road and Casabella Street, for the installation of an automated teller machine (A.T.M.) for a License fee of \$500.00.

SECTION 2. That the City Manager, or Assistant City Manager, is hereby authorized to execute said License Agreement with THE FROST NATIONAL BANK OF SAN ANTONIO (UNIVERSITY BRANCH), said License Agreement being in substantially the same form as the instrument attached hereto as Attachment "A".

PASSED and APPROVED on this 4th day of October, 1990.

Lila Cockrell
M A Y O R

ATTEST: *Norma S. Rodriguez*
City Clerk

APPROVED AS TO FORM: *Tommy Sunday*
City Attorney

90-44

ARTS & CULTURAL AFFAIRS
AVIATION
BUDGET & RESEARCH
BUILDING INSPECTIONS
BUILDING INSPECTIONS-HOUSE NUMBERING
CITY ATTORNEY
LUIS GARCIA, MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
TRIAL SECTION
CITY MANAGER
KAREN DAVIS, ASST. TO THE MANAGER
CODE COMPLIANCE
SPECIAL PROJECTS
CITY PUBLIC SERVICE
CITY PUBLIC SERVICE-MAPS & RECORDS
CITY WATER BOARD
COMMERCIAL RECORDER
COMMUNITY DEVELOPMENT (BASEMENT)
CONVENTION & VISITORS BUREAU
CONVENTION FACILITIES
DOME DEVELOPMENT OFFICE
DOWNTOWN INITIATIVES
ECONOMIC & EMPLOYMENT DEVELOPMENT (DEED)
ENVIRONMENTAL MANAGEMENT
FINANCE DIRECTOR
ASSESSOR
CONTROLLER
GRANTS
RISK MANAGEMENT
TREASURY
FIRE DEPARTMENT
HUMAN RESOURCES & SERVICES
INFORMATION RESOURCES
INTERNATIONAL RELATIONS
LIBRARY
MARKET SQUARE
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION (PUBLICATION)
MUNICIPAL COURTS
PARKS & RECREATION
PERSONNEL
PLANNING
ZONING ADMINISTRATION
POLICE DEPARTMENT
PUBLIC UTILITIES
PUBLIC WORKS
CAPITAL PROJECTS MANAGEMENT
CENTRAL MAPPING
ENGINEERING
REAL ESTATE (BILL TOUDOUZE)
TRAFFIC ENGINEERING
PURCHASING & GENERAL SERVICES
WATER RESOURCES MANAGEMENT

ITEM NO. 20
 OCT 04 1990

MEETING OF THE CITY COUNCIL DATE: _____

MOTION BY: _____ SECONDED BY: _____

72429

ORD. NO. _____ ZONING CASE _____

RESOL. _____ PETITION _____

	ROLL CALL	AYES	NAYS
MARIA BERRIOZABAL PLACE 1			
JOE WEBB PLACE 2			
HELEN DUTMER PLACE 3			
FRANK D. WING PLACE 4			
WALTER MARTINEZ PLACE 5			
BOB THOMPSON PLACE 6			
YOLANDA VERA PLACE 7			
NELSON WOLFF PLACE 8			
WEIR LABATT PLACE 9			
JAMES C. HASSLOCHER PLACE 10			
LILA COCKRELL PLACE 11 (MAYOR)			

FILE *First Book*

90-44

CONSISTENT AGENDA #3

ATTACHMENT A

to

ORDINANCE NO. 7 2 4 2 9
PASSED and APPROVED on OCTOBER 4, 1990.

LICENSE AGREEMENT

with

THE FROST NATIONAL BANK OF SAN ANTONIO (UNIVERSITY BRANCH) S.P. 775

LICENSE AGREEMENT

This agreement is by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation, as Licensor, (hereinafter called "CITY") acting by and through its City Manager pursuant to Ordinance No. 72429 dated October 4, 1990 and THE FROST NATIONAL BANK OF SAN ANTONIO (UNIVERSITY BRANCH), a National Banking Association, hereinafter called "LICENSEE".

I. GRANT OF LICENSE

1.1 For and in consideration of the observance of the terms and conditions set forth below, the CITY hereby grants to LICENSEE, a license to encroach onto City right-of-way, specifically a drainage easement on Lot 3, New City Block 16072 located within I.H. 10 and Casabella Street in San Antonio, Bexar County, Texas as more particularly shown on Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

II. USE

2.1 Such License is granted by CITY and herein restricted to the use by LICENSEE for the sole purpose of installing an automated teller machine (A.T.M.) which encroaches 9'6" onto the drainage easement right-of-way, as well as a new curb and new landscaping, as more specifically shown on Exhibit "B" attached hereto, in accordance with the terms and conditions hereafter recited. Said A.T.M., curb, and landscaping, are hereinafter referred to herein as "improvements."

III. TERM

3.1 The License hereby granted shall be for a term of twenty-five (25) years beginning ten (10) days after the date of passage of the City ordinance, unless otherwise terminated pursuant to the terms herein, including those set forth in Article VII.

3.2 CITY will consider, and LICENSEE may negotiate for, an extension hereof at or prior to the time of the expiration hereof, pursuant to the provisions of Article XI of the City Charter, or its successor provision. However, at such renewal, the fee set forth above shall be adjusted to reflect the fair market license fee existing at the time of renewal, as determined by an appraisal done by CITY through its Director of Public Works or his successor. All other terms and provisions still in force under this agreement will remain in effect at the time of said renewal. LICENSEE recognizes that the twenty-five (25) year term is necessitated by the permanent encroachment of the improvements on the CITY drainage easement right-of-way.

IV.
CONSIDERATION

4.1 As consideration for this grant, the LICENSEE shall pay to the City of San Antonio the sum of FIVE HUNDRED DOLLARS (\$500.00) to cover the 25 year term of this License at the Office of the City of San Antonio Treasurer in San Antonio, Bexar County, Texas.

4.2 The fee for this agreement shall be deposited in Index Code No. 012435, which fee is due and payable within ten (10) days after the date of passage of the City Ordinance referenced above.

V.
CONDITIONS

5.1 LICENSEE agrees to (1) comply with all applicable federal and state environmental, as well as, other laws and CITY ordinances and codes; (2) provide for adjustments if necessary of public facilities of the CITY, and Southwestern Bell Telephone or other utilities prescribed by said entities; and (3) avoid damage or disruption of any other property rightfully existing in said easement right-of-way. Further, LICENSEE agrees to the following specific conditions, respecting the designated entities, to-wit:

- A. DEPARTMENT OF BUILDING INSPECTIONS: LICENSEE agrees to submit the construction plans for approval prior to obtaining the permits and further agrees to the inspections called for by said department for said automated teller machine.
- B. PARAGON CABLE: LICENSEE understands that if the CATV facilities require rebuilding or removal and relocation underground due to the construction of said improvements, LICENSEE will be financially liable and obligated for materials, design, construction, labor and overhead costs.
- C. CITY PUBLIC SERVICE BOARD: LICENSEE agrees to provide an Indemnity Agreement.

5.2 CITY shall assume no liability and no expense by reason of its grant of this License or its exercise by LICENSEE and CITY shall not be liable for any damages caused to the premises of LICENSEE covered by this License.

VI.
LIENS PROHIBITED

6.1 LICENSEE covenants that it shall not bind, or attempt to bind, CITY for payment of any money in connection with any repair, maintenance, or adjustments in, on, or about the premises, whether authorized or unauthorized hereunder.

6.2 LICENSEE hereby agrees to promptly pay all persons supplying labor, services, and materials in the performance of any and all contract work related to repair, maintenance, or adjustments that may hereafter be made, and LICENSEE shall and will fully indemnify and hold harmless the CITY against any and all claims, liens, suits or actions asserted by any person, persons, firm or corporation on account of labor, materials or services furnished to LICENSEE during the performance of any said contract work, repair, maintenance, or adjustments and against any claim for injury or death to persons or damage to property.

VII.
TERMINATION/REMEDIES

7.1 Any breach or violation by LICENSEE of the provisions herein contained shall give rise immediately to the right on the part of the CITY, at its option, upon 14 days' written notice to LICENSEE, unless such breach or violation is cured prior to the expiration of the notice period, to cancel this License or to seek any remedy which now is or may be provided by law, whether or not stated herein. No waiver by CITY of a breach or violation on the part of LICENSEE shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained.

7.2 The right is expressly reserved to CITY, acting through its Council, to terminate this License if the use made of the property under this License, in CITY'S sole and exclusive judgment, should be deemed inconsistent with the health, safety or welfare of the public or such use may have become a nuisance.

7.3 Upon expiration or termination of this License Agreement, by CITY, all rights and privileges herein granted shall forthwith cease and terminate. LICENSEE agrees to remove the improvements from the licensed premises, at the sole cost and expense of LICENSEE, and restore the premises to its original or better condition, as applicable, existing prior to the granting of this License, and subject to approval of the CITY upon inspection, which approval shall not be unreasonably withheld or delayed. If the improvements are not removed within thirty (30) days after the end of the License term, or any extended term, then such improvements shall become the property of the CITY, to be removed or otherwise disposed of by CITY without any liability of CITY to LICENSEE therefor.

7.4 Notwithstanding the above, should LICENSEE discontinue the use of the premises or remove any of said improvements, which are encroaching, voluntarily or should a third party creditor involuntarily remove any of said improvements then this License shall terminate on the date of such event without further action of either party to this this License Agreement.

VIII.
MAINTENANCE

8.1 LICENSEE, at its sole cost and expense, agrees to maintain, as necessary, the improvements by adhering to all applicable safety standards.

8.2 LICENSEE shall promptly repair any damage to the encroached area caused by the maintenance of the improvements.

IX.
COMPLIANCE

9.1 LICENSEE shall, in connection with any repair, use, and maintenance of the premises, comply with all applicable federal, state and local laws, ordinances, rules and regulations.

X.
INSURANCE

10.1 As it relates to the improvements located on the licensed premises, LICENSEE shall provide and maintain insurance, at its own expense, in the following type and amounts for the term of this License of the said improvements:

<u>Type</u>	<u>Amount</u>
1. Commercial General (Public Liability -- to include coverage for the following where the exposure exists: (a) Premises/Operations (b) Independent Contractors (c) Products/Completed Operations (d) Personal Injury (e) Contractual Liability	Combined Single Limit for Bodily Injury and Property Damage: <u>\$500,000</u> or its equivalent
2. Property Insurance - for physical damage to the property LICENSEE including improvements and betterments to the premises	Coverage for a minimum of EIGHTY (80%) percent of the replace cost of the property
3. In those cases where LICENSEE makes any repair, maintenance or adjustments, as provided herein, then LICENSEE shall further procure and maintain in full force and effect during the term of such contract work and until all work is accepted by the CITY OF SAN ANTONIO, (1) builder's risk insurance at eighty (80%) percent of the replacement cost of the improvements being repaired, maintenance or adjusted; (2) public liability insurance adequate to fully	

protect CITY and LICENSEE from and against any and all liability for death of, or injury to, persons, or damage to property, caused in or about, or by reason of, the construction of said improvements; and (3) worker's compensation insurance.

10.2 LICENSEE agrees that with respect to the above required insurance, the City of San Antonio shall:

- (a) Be named as an additional insured/or an insured, as its interest may appear.
- (b) Be provided with a Waiver of Subrogation for Worker's Compensation and Employer's Liability insurance coverage.
- (c) Be provided with thirty (30) days advance notice in writing of cancellation or material change.
- (d) Be provided with a Certificate of Insurance(s), evidencing the above required insurance, prior to the commencement of the license. Said Certificate of Insurance(s) shall be provided to:

City Clerk
City of San Antonio
P.O. Box 839966/2nd Floor
San Antonio, Texas 78283-3966

10.3 CITY reserves the right to review and require changes in insurance coverage at any time during the term of this License. LICENSEE agrees to comply with any such required changes.

XI. INDEMNITY

11.1 LICENSEE agrees to fully indemnify, save and hold harmless CITY from and against all claims and actions and all expenses incidental to the investigation and defense thereof, based upon or arising out of the execution of this License or any injuries or death to third persons or any damages to their property resulting from the improvements or use of said improvements which exist on the premises. Further, CITY shall not be liable for and LICENSEE will reimburse, indemnify and save CITY harmless from any and all costs, fines, suits, claims, losses, damages, demands, causes of action or liability of any kind (including investigation expenses and attorney's fees) by reason of any negligence, misconduct, acts or omissions, or any breach, violation, or non-performance of any covenant hereof on the part of LICENSEE or its agents, employees, or invitees. Further this indemnity includes any damages, expense, fines, claims, suits, and liability on account of any and all damage to, or loss or destruction of any property, or death of any person or persons, resulting from or in any way related to, or connected with, any work covered hereunder and any property of LICENSEE, and contractors and subcontractors of LICENSEE and CITY. Such indemnity shall apply where any such costs, fines, suits, claims, losses, damages, demands, causes of action, or liability arise in part from the negligence of CITY. It is the

express intention of CITY and LICENSEE that the indemnity provided for in this paragraph is indemnity by LICENSEE to indemnify and protect CITY from the consequences of CITY's own negligence, excluding only where the cause of the injury, death or damage was the sole negligence of CITY, its agents, employees, and contractors. CITY shall not be liable or responsible for any loss or damage to any property or person caused by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority or other matter beyond the reasonable control of CITY, or for any damage or inconvenience which may arise through repair, maintenance, or alterations of any part of the premises, or failure to make repairs to the premises or to any improvements located thereon, or from any cause whatever except as results from CITY's sole negligence.

11.2 Further, CITY shall not be liable for any damage either to the person or property of LICENSEE or to other persons due to the premises or any part or appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, sprinkler systems, or defective wiring or excessive or deficient electrical current or malfunctioning, or from any act or omission of LICENSEE, its members, officers, employees, or other occupants of the premises, if any, or any other persons, due to the happening of any accident in or about said premises.

XII. UTILITIES

12.1 LICENSEE will pay the cost of all utilities, if any, including connection fees, incurred for operation and maintenance.

XIII. ASSIGNMENT

13.1 This License is personal to LICENSEE and shall not be assigned by LICENSEE without the prior written consent of CITY, which consent shall not be unreasonably withheld, but which consent must be evidenced by passage of a City of San Antonio ordinance. Any attempt to assign this License without the consent of CITY will immediately terminate all privileges granted to LICENSEE hereunder.

XIV. CONDEMNATION

14.1 It is agreed and understood that in the event that the premises are taken, in whole or in part, by any governmental authority other than CITY, this License and all rights or permission to use hereunder shall, at the option of CITY, cease on the date title to

such land so taken or transferred vests in the condemning authority. LICENSEE hereby waives all rights to any proceeds of such condemnation. LICENSEE shall have the right to seek a separate condemnation award.

XV.
ATTORNEY'S FEES

15.1 In the event CITY brings any action under this License alleging that LICENSEE hereto has defaulted hereunder, and CITY prevails, then CITY shall be entitled to recover from LICENSEE its reasonable attorney's fees. LICENSEE, which becomes so liable hereunder, agrees to make prompt payment of such fees to CITY.

XVI.
SEPARABILITY

16.1 The parties hereto agree that if any clause or provision of this License is determined to be illegal, invalid or unenforceable, under any present or future federal, state, or local law, including, but not limited to, the City Charter, City Code, or City ordinances of the City of San Antonio, Texas, effective during the term of this License, then and in that event, it is the intention of the parties hereto that the remainder of this License shall not be affected thereby, and it is also the intention of the parties to this License that in lieu of each clause or provision of this License that is illegal, invalid or unenforceable, there be added as a part of this License a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XVII.
AMENDMENT

17.1 No amendment, modification, or alteration of the terms of this agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed and agreed to by the parties hereto.

XVIII.
TAXES AND LICENSES

18.1 LICENSEE shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes, license fees, permit fees, debts, and obligations, which are now or may hereafter be levied upon the premises, or upon LICENSEE, or incurred by LICENSEE related to the improvements and activities

hereunder, or upon any of LICENSEE's property used in connection therewith, and shall maintain in current status all Federal, State and local licenses and permits required for the improvements within and above the CITY public right of way.

XIX.
NO SUBSTANTIAL INTEREST

19.1 LICENSEE acknowledges that it is informed that Texas law prohibits contracts between the CITY and any local public official, such as a City officer or employee, and that the prohibition extends to an official of CITY agencies such as CITY-owned utilities and certain CITY boards and commissions, and to contracts involving a business entity in which the official has an interest. LICENSEE certifies (and this contract is made in reliance thereon) that neither its agents, employees, or anyone under its control, nor any person having a substantial interest in this contract, is an official of CITY or any of its agencies.

XX.
NOTICES

20.1 Notices to the CITY required or appropriate under this License shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid addressed to the City Clerk, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966 or to such other address as may have been designated in writing by the City Manager of the City of San Antonio, from time to time. Notices to LICENSEE shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to THE FROST NATIONAL BANK OF SAN ANTONIO, (UNIVERSITY BRANCH), P.O. BOX 1600, San Antonio, Texas 78296, ATTENTION: Properties - Administration or to such other address on file with the City Clerk.

XXI.
APPROVAL OF THE CITY

21.1 Whenever this License calls for approval by CITY, unless otherwise explained herein, such approval shall be evidenced by the written approval of the City Manager of the City of San Antonio or his designee.

XXII.
RELATIONSHIP OF PARTIES

22.1 Nothing contained 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 other similar such relationship between parties hereto. It is understood and agreed

that no provision contained herein nor any act of the parties hereto creates a relationship other than the relationship of LICENSOR and LICENSEE.

XXIII.
TEXAS LAW TO APPLY

23.1 This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas. Further, the privileges granted hereunder shall be construed to be only those authorized by pertinent Texas Statutes and the City Charter of the City of San Antonio, Texas and not to include anything inconsistent with the rights of the public in the aforementioned right-of-way area.

XIV.
GENDER

24.1 Words of any gender used in this License shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context requires otherwise.

XXV.
CAPTIONS

25.1 The captions contained in this License are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this License.

XXVI.
ENTIRE AGREEMENT

26.1 This License Agreement, together with its exhibits and the authorizing ordinance or ordinances, in writing, constitute the entire License Agreement, with any other written or parol agreement with LICENSEE being expressly waived by LICENSEE. It is understood that the Charter of the CITY requires that all contracts with the CITY be in writing and adopted by ordinance.

XXVII.
AUTHORITY

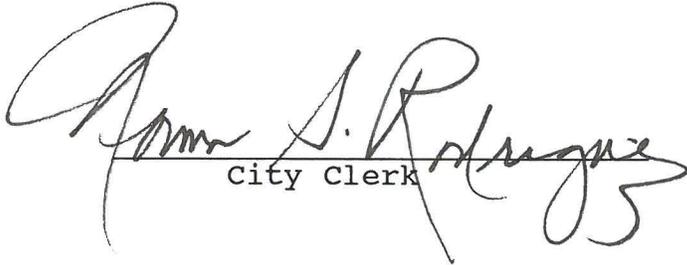
27.1 The signer of this License for LICENSEE hereby represents and warrants that he has full authority to execute this License and that he has had full opportunity to read the contents hereof and to seek its review by legal counsel.

EXECUTED this the 10th day of December, 1990.

LICENSOR:

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

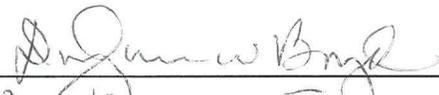
ATTEST:


city Clerk

By: 
City Manager

LICENSEE:

THE FROST NATIONAL BANK OF SAN
ANTONIO (UNIVERSITY BRANCH), a
National Banking Association

By: 
Title: Sr. Vice President

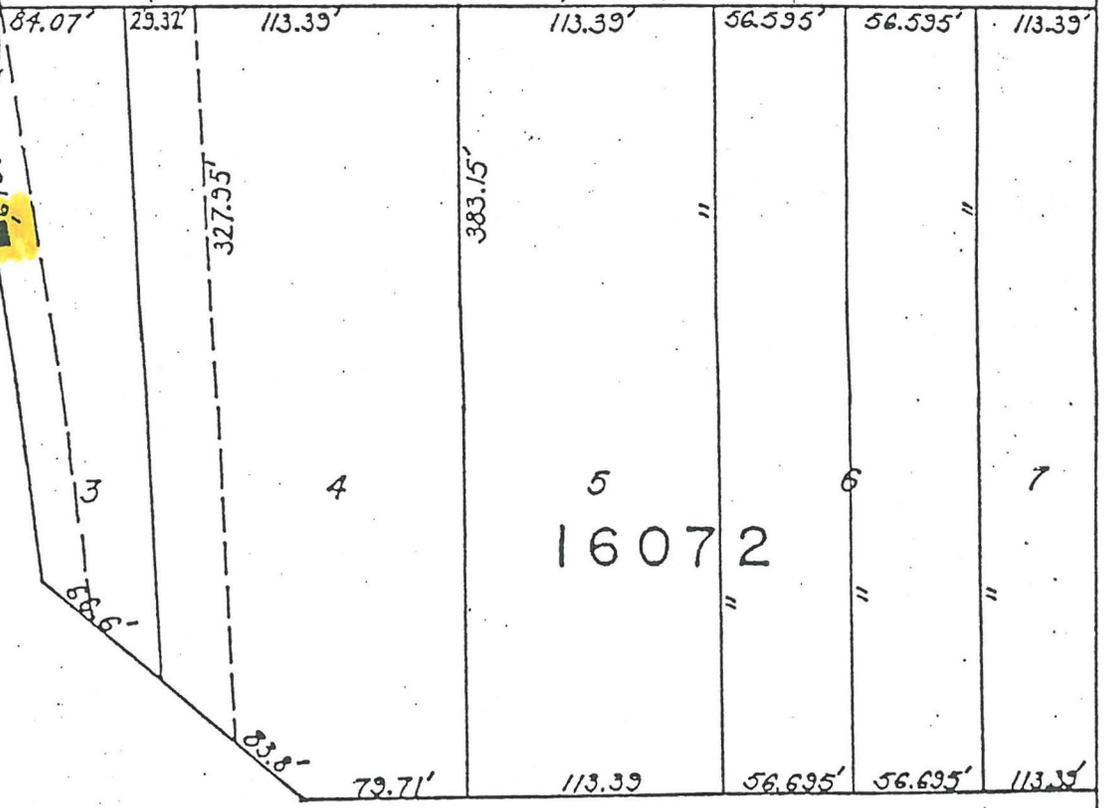
UNIT 3

SUB'D

411.74' TO CLINGMAN RD.
(PRIVATE RD.)
46.715'

121' ELECT. & DRAINAGE EASEMENT

1737.42'



16072

HWY. 87 N. (I.H.10)

CASABELLA ST.

P-12A
0.31 Ac.

U.S.

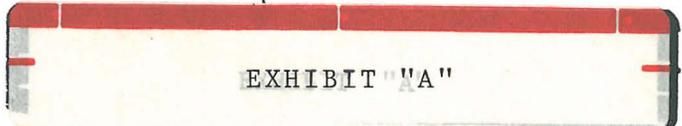


EXHIBIT "A"

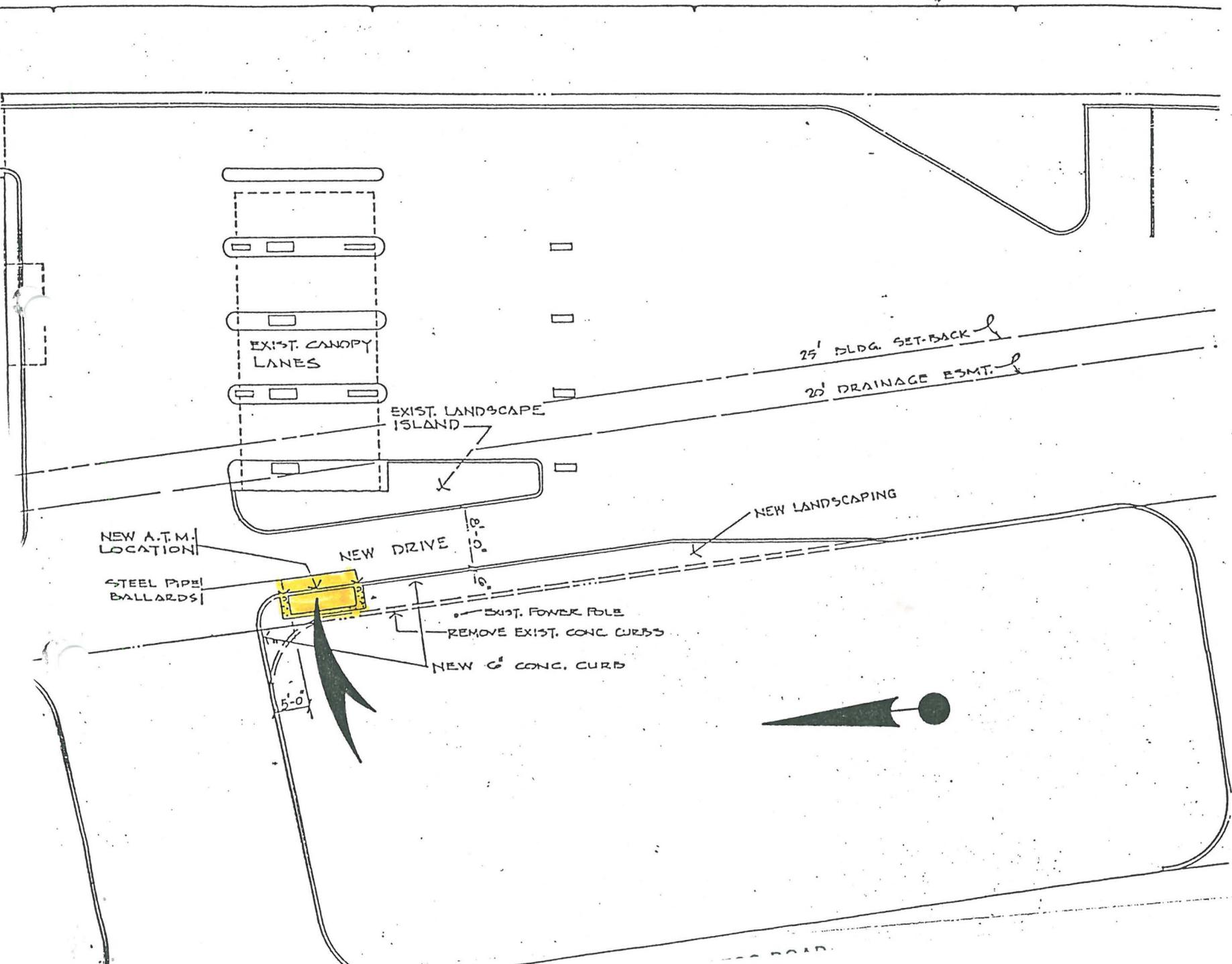


EXHIBIT "B"
EXHIBIT "B"

CITY OF SAN ANTONIO

Interdepartment Correspondence Sheet

CONSENT AGENDA
ITEM NO. 20

TO: City Council (Through City Manager)

FROM: Joe A. Aceves, P.E., Director of Public Works

COPIES TO: William S. Toudouze, Real Estate Manager; Richard G. Mendoza, Real Estate Specialist; and File

SUBJECT: (S.P. No. 775) Request for License to encroach upon City of San Antonio Drainage Easement. (General Location: I.H. 10 and Casabella Street) in District 8. Date September 21, 1990

PETITIONER: FROST BANK
c/o Richard E. Frazor, P.E.
Sun Belt Engineers, Inc.
3211 Nacogdoches Road
San Antonio, Texas 78217

SUMMARY AND RECOMMENDATIONS:

The Petitioner is requesting a License to encroach upon a City of San Antonio drainage easement on Lot 3, New City Block 16072 in the location as shown on Exhibits "A", "B" and "C" attached hereto, for the purpose of installing an automated teller machine.

Staff recommends approval.

In compliance with City procedures, Petitioners request has now been circulated through all interested City departments and utility agencies involved.

Building Inspections, Paragon Cable T.V. and City Public Service have imposed specific conditions to which Petitioner has formally assured compliance.

Licensee has agreed to provide insurance coverage and hold the City of San Antonio harmless from any and all liability in connection with this License. Said License shall be for a period of 25 years for a total consideration of \$500.00.

This agreement will contain any and all requirements and stipulations between the City of San Antonio and the Petitioner.

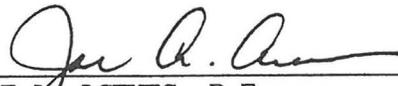
FINANCIAL IMPACT:

By granting this License Agreement the City of San Antonio will receive a fee of \$500.00.

Page 2
memo-City Council
S.P. No. 775
September 21, 1990

SUPPLEMENTAL COMMENTS:

The Planning Commission, at its meeting of September 12, 1990 concurred with the granting of this License.

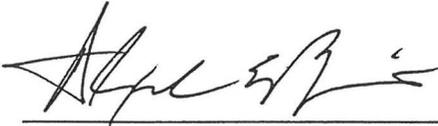


JOE A. ACEVES, P.E.
Director of Public Works

JAA:mvm

ATTACHMENTS

RECOMMENDATION APPROVED:



ALEXANDER E. BRISEÑO
City Manager