

CITY COUNCIL MEETING

AGENDA ITEM IX



CITY OF FRANKLIN
COUNCIL AGENDA REPORT

May 6, 2013 City Council Meeting

Subject: City Council to consider renewal of Lease Agreement
between the City and Franklin Targeteers.

Recommended Motion: *"I move that the Franklin City Council approves the renewal of the Lease Agreement between the Franklin Targeteers and the City of Franklin for five years (5 years) beginning April 1, 2013 and ending March 31, 2018, and authorize the City Manager to sign said agreement on behalf of the City."*

Mayor calls for a second, discussion, and the vote.

Discussion: At the April 2, 2012 City Council Meeting the lease agreement was approved for a 10-month renewal. At that time, there was discussion to considering an extended period of years when the agreement was due for renewal again. The City Attorney has reviewed the lease agreement and has made some changes as outlined in his attached letter.

Attachments: Lease Agreement
Attorney Fitzgerald's Letter

WESCOTT, DYER, FITZGERALD & NICHOLS, PA

ATTORNEYS AT LAW

RODNEY N. DYER
ROBERT L. HEMMON
EDMUND S. HIBBARD
PAUL T. FITZGERALD
JOHN P. GIERE
SHAWN E. NICHOLS
ALLISON M. AMBROSE
MATTHEW D. HUOT

THE BOWMAN STREET SCHOOL
28 BOWMAN STREET
LACONIA, NEW HAMPSHIRE 03246-3761

PHONE: (603) 524-2186
FAX: (603) 528-2122

HAROLD E. WESCOTT
1903 - 1991

OF COUNSEL

PETER V. MILLHAM
DORCAS J. GORDON

SENDER'S E-MAIL
PFitzgerald@wdfnlawyers.com

April 17, 2013

Elizabeth Dragon, City Manager
City of Franklin
316 Central Street
Franklin, NH 03235

(Via e-mail only)

Re: Franklin Targeteers

Dear Elizabeth:

Responding to your e-mail of March 26th, I am enclosing a revised Lease Agreement for consideration by the Council at its upcoming May meeting. I note that the majority of the items mentioned in your e-mail have already been incorporated into the Lease and so the changes that I have made are limited to the following:


3. Lease Term. The term has been increased to five (5) years commencing on the date assigned in the Lease preamble with successive five (5) year renewals possible, but not mandatory. I have not changed the April 1st starting date but if for any reason you want that date to be closer to the approval granted by the Council or to be actual signing date, that can be accomplished simply.
12. Termination. I have rewritten the termination clause to make it slightly stronger from the City's viewpoint. In my opinion the existing language was already strong enough to allow the City to terminate the Lease at any time.
- 16 and 17. Amendment and Governing Law. I have added these two rather standard provisions for the benefit of the parties.

Finally, I note that in Section 1 (Premises) that there is to be a plan attached to the Lease. This is a common provision which is often inadvertently overlooked but I would suggest that at the very least we attach a copy of the relevant section of the Franklin Tax Map.

Elizabeth Dragon, City Manager
Re: Franklin Targeteers
April 17, 2013
Page Two

Please feel free to contact me should you have any further questions or wish to discuss additional changes.

Sincerely,

A handwritten signature in black ink, appearing to be 'PTF', written over a dotted horizontal line.

Paul T. Fitzgerald

PTF/src
Enc.

CONFIDENTIALITY STATEMENT

This is a **confidential** communication between attorney and client and is not to be considered part of any public record; nor is it to be divulged to the public without the prior written consent of the client.

LEASE AGREEMENT

City of Franklin, New Hampshire
And
Franklin Targeteers

LEASE AGREEMENT made this ___1st___ day of April, 2013, by and between the City of Franklin, a New Hampshire Municipal Corporation, located in the County of Merrimack with a place of business at Memorial Hall, Central Street, Franklin, New Hampshire, hereinafter referred to as "the Lessor" and the Franklin Targeteers, a voluntary association organized pursuant to the laws of the State of New Hampshire, with a place of business at P. O. Box 352, Franklin, New Hampshire 03235, hereinafter referred to as "the Lessees".

1. **Premises** – The Lessor hereby agrees to lease to the Lessees, and the Lessees agree to lease from the Lessor a portion of a certain parcel of land owned by the Lessor in the City of Franklin, said land lying east of the Merrimack River and located off the easterly side of River Street in said Franklin and being a portion of a parcel designated as Tax Map #003-121-402. The specific area to be leased by the Lessees is shown on the enclosed plan which is hereby incorporated by reference.
2. **Rent Reserved** – The Lessees shall pay to the Lessor the sum of One Dollar (1.00) per year, in advance.
3. **Lease Term** – This lease shall be for a term of five (5) years commencing on the date first written above and may be renewed for successive five (5) year terms on the terms and conditions contained herein, subject to the parties' rights of termination as hereinafter described.
4. **Use of Premises** – The sole use to which the premises may be put by the Lessees is for a firearm target practice range. No other use of the property shall be permitted without the written agreement of the Lessor. There shall be no hunting or taking of live game on the premises. Additionally, there shall be absolutely no use of alcoholic beverages (or impairment inducing drugs) on the premises, nor shall any individual be allowed to use the premises who is

impaired by reason of the consumption of alcohol or drugs, regardless of the legality of such consumption.

5. **Enclosure** - Periodically during the term of this lease, a representative of the Lessees and a representative of the Lessor shall walk the boundaries and the Lessees shall thereafter post appropriate warning signs around the perimeter of the leased area, said signs being highly visible and posted no less frequently than every 25 yards on the perimeter and containing a warning that a target practice area is being entered and that entry is forbidden to unauthorized persons. Said signs shall be approved as to size and design by the office of the Franklin City Manager. Additionally, the Lessees shall maintain a locked gate at the entrance to the property during the term of lease.
6. **Insurance** – Prior to the commencement of the use of the premises for target practice, the Lessees shall obtain adequate liability insurance for the protection of any injured party who is injured or participating in, or as a result of, the use of the premises as a target range. The City of Franklin shall be a named insured on said policy and a certified copy of the policy shall be delivered to the office of the Franklin City Manager before target practice activities commence. Policy limits shall be no less than \$1,000,000.00. Annually, or more frequently upon request, the Lessees shall furnish proof of insurance.
7. **Training** – The Franklin Targeteers shall assume responsibility for ensuring that each member or guest who is allowed to use the premises for target practice purposes shall be adequately educated to use the premises for target practice purposes and shall be adequately educated in the safe handling of a firearm so as to reduce to the greatest possible degree the possibility of personal injury.
8. **Municipal Liability** – In addition to the provisions contained above, the Lessees do hereby agree that neither it nor its members shall bring any claim against the Lessor for any injury which occurs as a result of the Lessees use of the described property, whether for the approved purpose or otherwise, and further agrees that it shall indemnify the City and hold it harmless from any claim by any third party for injury to person or to property which may arise from the use of the premises by the Lessees.

9. **Restricted Hours** – The property shall not be used by the Lessees for target practice at any time prior to 8:00 a.m. nor shall it be used later in the day than one-half hour before sunset. Additionally, the property shall not be used on Saturday, Sunday, or Holiday prior to 9:00 a.m.
10. **Improvements** – All site improvements made by the Lessees shall be after consultation and with the permission of the Franklin City Manager. The Lessees reserve the right to remove any personal property which it may install at the site at the termination of this agreement.
11. **Municipal Use** - The Lessees hereby agree that in addition to its own use, the Franklin Police Department shall have exclusive use of the range for target practice, qualifications, efficiency testing and any other firearms training that the City of Franklin Police Department deems appropriate and necessary for the officers of the department, as directed by the Chief of Police. In the event of conflicting use schedules, the Lessor's schedule shall be controlling but the Lessor shall make the area available for the Lessees use at reasonable times and frequencies. The Lessees shall not be responsible for property or personal injury incurred during the property's use by the Lessor, except to the extent such losses are caused by the gross negligence or willful misconduct of the Targeteers. Individual officers, who are employees of the Franklin Police Department, may also use the facility at times mutually convenient to themselves and the Lessees. Use of the range by an individual officer shall not give rise to the Lessor's ability to claim exclusive temporary use of the premises. Individual officers need not be members of the Franklin Targeteers to use the facility. Additionally, such officers may bring guests to the facility and such guests may utilize the facility, but the officers must be present at all times when the range is in use by such a guest.
- The Franklin Police Department as an agent of the Lessor, shall not only have exclusive use of the range, but in all matters concerning police firearms training shall be guided and directed by the department's certified firearms' instructors, who shall be the department's range masters as directed and approved by the Franklin Police Chief.

No use of the range shall be made by the Lessees while it is in use by the Franklin Police Department.

12. **Termination** – Regardless of any prior language in this document concerning leasehold terms or annual lease payments, the Lessor specifically reserves the right to terminate this lease at any time. Such termination shall be effective upon notice from the Franklin City Manager to any representative of the Lessees that such right of usage has been halted. In the event that the City exercises this option, then the Lessees obligations of maintenance shall cease immediately but all obligations concerning financial liability shall continue until the resolution of any such issue. Notwithstanding the language at Paragraph 3, this is a tenancy at will that may be terminated by the Lessor at any time.
13. **Information Provided by Lessees** – Lessees shall continuously provide the Lessor with an updated list of its officers, including name, title, address and telephone number.
14. **Merger** – The parties agree that this document constitutes the complete agreement between them and that neither is relying upon any representations or statements not contained herein.
15. **Assignment and Binding Effect** – No part of this agreement may be assigned without the written permission of the other party. This agreement shall be binding upon the parties, their representatives and successors.
16. **Amendment**. No term or provision of this Agreement shall be altered, amended or changed in any way except in writing, with such amendment being executed by the parties hereto.
17. **Governing Law**. This contract shall be governed by, and interpreted in accordance with, the laws of the State of New Hampshire. It is specifically agreed that the courts of the State of New Hampshire shall have jurisdiction over any dispute arising herefrom.

Witness

**Elizabeth Dragon, City Manager
Duly Authorized**

Witness

**President, Franklin Targeteers
Duly Authorized**

Lease Agreement Targeteers

COMMERCIAL/INDUSTRIAL PROPERTY RECORD CARD / FRANKLIN, NEW HAMPSHIRE / EFFECTIVE DATE OF VALUE: APRIL 1, 2012

RIVER STREET Parcel ID: 121-402-00 SHEET # 57 Number of Units: Class: E - 903 Zoning: C Card # 1 of 1

CURRENT OWNER/ADDRESS: FRANKLIN, CITY OF

316 CENTRAL STREET NH 03235
 FRANKLIN DEED BOOK: 1133
 DEED PAGE: 225
 DEED DATE: 19720531
 LAST UPDATE: 20110621
 SALE DATA: TYPE PRICE CODE

OTHER FEATURES/ATTACHED IMPROVEMENTS IDENT. UNITS

LAND DATA:	TYPE	SIZE	LAND INFLUENCE(S)	FACTOR	LAND VALUE
PRIMARY		1.000	0		47,500
SECONDARY		4.000	0		142,900
MARSH/WASTE		6.000	0		3,000
TOTAL ACREAGE:		38.860			327,100
TOTAL LAND VALUE:					327,100

Neighborhood ID: 304.00

ASSESSMENT INFORMATION:

ASSESSMENT INFORMATION:	PRIOR	CURRENT
LAND	327,100	327,100
BUILDING	2,400	2,400
TOTAL	329,500	329,500

DATA COLLECTION INFORMATION:

20060526 JP UNIMP.PARCEL
 20010209 ET UNIMP.PARCEL

SKETCH	AREA	AREA	AREA
A	H		
B	I		
C	J		
D	K		
E	L		
F	M		
G	N		

COST APPROACH DETAIL:

LEVELS	USE	PERIMETER	HEATING	A/C	W/H	AREA	SF RATE	RCN	% GOOD	RCNLD
TO			NONE	NONE						
TO			NONE	NONE						
TO			NONE	NONE						
TO			NONE	NONE						
TO			NONE	NONE						
TO			NONE	NONE						
TO			NONE	NONE						
TO			NONE	NONE						
TO			NONE	NONE						

STRUCTURE TYPE:

BUILDING #

YEAR BUILT

UNITS

QUALITY GRADE

IDENT UNITS

EFFICIENCIES

1-BEDROOMS

2-BEDROOMS

3-BEDROOMS

TOTAL UNADJ.RCNLD

AVE % GOOD

GRADE FACTOR

IDENT UNITS

FUNC/ECON FACTOR

RCNLD

OUTBUILDING/YARD ITEM DETAIL:

DESCRIPTION	WIDTH	LENGTH	QUAN.	YEAR BUILT	PHYS. COND.	FUNC. UTIL.	VALUE
CP5	9	50	1	1970	NORMAL	NORMAL	1,320
CP5	8	12	1	1970	NORMAL	NORMAL	280
RS1	8	13	1	1970	NORMAL	NORMAL	790

OTHER IMPROV

TOTAL OBJ/YARD VALUE: 2,390

PERMIT DATA: DATE # PRICE PURPOSE

TOTAL OBJ/YARD VALUE: 2,390

INCOME APPROACH SUMMARY:

TOTAL RENTABLE SQUARE FEET:

MARKET RENT/SQUARE FOOT:

POTENTIAL GROSS INCOME:

TOTAL EXPENSES (INCL. MNGMNT.):

TOTAL NET OPERATING INCOME:

OVERALL RATE:

INCOME INDICATED VALUE: