



## Travis County Commissioners Court Agenda Request

**Meeting Date:** December 27, 2011

**Prepared By:** John Carr **Phone #:** 854-4772

**Director/Manager:** Roger A. El Khoury, M.S., P.E., Director, FMD

**Department Head:** Steven M. Manilla, P.E., County Executive-TNR

**Sponsoring Court Members:** County Judge Samuel T. Biscoe

**AGENDA LANGUAGE:** Consider and take appropriate action on approval of a replacement license agreement for 60 parking spaces located at 9<sup>th</sup> and Lavaca Street.

### **BACKGROUND/SUMMARY OF REQUEST:**

Travis County has rented parking in the garage located at 9<sup>th</sup> and Lavaca since September 2001. The current license agreement for 60 unreserved parking spaces at this garage expires on December 31, 2011. Facilities Management Department (FMD) contacted the current operator of the garage, AMPCO Systems Parking and confirmed their willingness to enter into a new license agreement for another 12 months at the same terms as the expiring agreement. The new license agreement which is attached will provide access to 60 unreserved parking spaces at a rate of \$100 per month for each space from January 2012 through December 2012.

### **STAFF RECOMMENDATIONS:**

Facilities Management Department (FMD) recommends approval of the license agreement between Travis County and AMPCO Systems Parking for the use of 60 unreserved parking spaces at the 9<sup>th</sup> and Lavaca Street garage.

### **ISSUES AND OPPORTUNITIES:**

Facilities Management Department collaborated with Ms. Tenley Aldredge with the County Attorney's Office on the new license agreement. Funding for these parking spaces is included in the FMD lease budget. There are no financial or legal issues that would impact approval of this new agreement.

### **FISCAL IMPACT AND SOURCE OF FUNDING:**

Annualized cost is \$72,000, funded in lease budget line item.

**ATTACHMENTS/EXHIBITS:**

1. License Agreement

**REQUIRED AUTHORIZATIONS:**

Steve Manilla	County Executive	TNR	854-9429
Tenley Aldredge	Assistant County Attorney	County Attorney	854-9415
<i>CMC</i> Cynthia McDonald	Financial Manager	TNR	854-9383

**CC:**

Amy Draper	Financial Manager	FMD	854-9040

9520 – Facilities - 0101

**LICENSE AGREEMENT BETWEEN  
TRAVIS COUNTY AND AMPCO SYSTEMS PARKING, INC.  
FOR PARKING SPACES AT 9<sup>TH</sup> STREET AND LAVACA**

This License Agreement for Parking Space (this "Agreement") is entered into by and between TRAVIS COUNTY, TRAVIS, a political subdivision of the State of Texas ("COUNTY" OR "LICENSEE") and AMPCO Systems Parking, Inc., a corporation authorized to do and doing business in the State of Texas ("LICENSOR").

WHEREAS, COUNTY is currently licensing, and desires to continue to license, sixty unreserved parking spaces in the parking garage located at 9<sup>th</sup> and Lavaca, City of Austin, County of Travis (the "Facility") from LICENSOR; and

WHEREAS, LICENSOR has agreed to continuation of the existing use of sixty spaces by COUNTY at the current rate.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Term. The term of this Agreement shall commence upon the Effective Date and terminate December 31, 2012 (the "Initial Term") unless sooner terminated pursuant to the terms hereof.

License Grant. LICENSOR hereby licenses to COUNTY the right to use the following unreserved parking spaces at the Facility (the "Licensed Premises"): sixty (60) spaces for the period commencing on the Effective Date and terminating on December 31, 2012.

Address of Parties. LICENSOR's address for all purposes under this Agreement is:

AMPCO Systems Parking, Inc.  
816 Congress Avenue, Suite 130  
Austin, Texas 78701

LICENSEE's address for all purposes under this License is:

Honorable Samuel T. Biscoe (or his successor)  
Travis County Judge  
P.O. Box 1748  
Austin, Texas 78767

LICENSEE shall pay LICENSOR the sum of \$100.00 per space per month (or \$6,000.00 per month) for providing the Licensed Premises in accordance with the specifications set out above and the terms and conditions of this Agreement (the "License Fee"). By signature hereto, LICENSOR verifies that it operates and/or manages the Licensed Premises on behalf of the owner and is authorized to enter into this Agreement and hereby offers the same to COUNTY in accordance with the terms and conditions of this Agreement for the consideration set out above.

The Travis County Commissioners Court hereby orders this Agreement exempted from the bidding requirements of the County Purchasing Act pursuant to Section 262.024(a)(6) of the Local Government Code in that it involves land.

### **General Terms and Conditions**

1. The License Fee is due and payable on a full-month basis on the first day of the month for which such fee is due. The License Fee will not be prorated for any reason whatsoever, except for (i) the first month if LICENSEE commences use of the Licensed Premises on any day other than the first day of such month, (ii) the last month if LICENSOR terminates this License on any day other than the last day of such month and such termination is not due to LICENSEE's breach or default under this License, and/or (iii) the last month if LICENSEE or LICENSOR terminates this License on any day other than the last day of such month pursuant to termination provisions set forth herein. No refunds, credits or allowances shall be granted to LICENSEE for any absence, vacation or other non-use of such parking privileges at the Licensed Premises.
2. LICENSOR acknowledges that the owner of the Facility maintains liability insurance coverage for the Licensed Premises. LICENSEE covenants and agrees to repair all damage to the Licensed Premises caused through action of LICENSEE's employees except to the extent of any contributory negligence of LICENSOR.
3. LICENSEE PARKS EACH VEHICLE IN/ON THE LEASED PREMISES AT ITS OWN RISK. ONLY A LICENSE TO PARK SAID VEHICLES IS HEREBY GRANTED. NO PROPERTY INTEREST IS BEING CONVEYED AND NO BAILMENT IS CREATED HEREBY. LICENSEE ACCEPTS THE USE OF THE LEASED PREMISES IN ITS "AS IS" CONDITION AND SHALL BE RESPONSIBLE FOR LOCKING SAID VEHICLES AND RETAINING THE KEYS. LICENSOR IS NOT RESPONSIBLE FOR FIRE, THEFT, VANDALISM, DAMAGE OR LOSS OF VEHICLES OR THEIR COMPONENT PARTS OR PERSONAL PROPERTY THEREIN, HOWEVER CAUSED.
4. If the Licensed Premises are so damaged as to render said premises unfit for occupancy, then, and from the date of such damage, this License shall cease and

be void, and the License Fee and other obligations hereunder shall be due and payable only to the date of such damage.

5. LICENSEE shall have access to the Licensed Premises 24 hours a day, 7 days a week.
6. In the event LICENSEE shall be in default in the payment of the License Fee or other charges hereunder or shall otherwise breach its covenants or obligations hereunder, and shall be and remain in default for a period of thirty (30) days after notice from LICENSOR to it of such default, LICENSOR shall have the right and privilege of terminating this Agreement and of entering upon and taking possession of the Licensed Premises, and shall have the remedies now or hereafter provided by law for recovery of the License Fee, repossession of the Licensed Premises and damages occasioned by such default.
7. In the event LICENSOR shall breach or be in default in the performance of any of the covenants or obligations on it herein imposed, and shall remain in default for a period of thirty (30) days after notice from LICENSEE to it of such default, LICENSEE shall have the right and privilege of terminating this Agreement and shall have the remedies now or hereafter provided by law for recovery of damages occasioned by such default.
8. LICENSEE may not assign this Agreement without LICENSOR's prior written consent in each instance.
9. This Agreement represents the entire and integrated agreement between LICENSOR and LICENSEE and supersedes all prior negotiations, representations, or agreements, either oral or written. This License may be amended only written instrument signed by both LICENSOR and LICENSEE. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF TRAVIS COUNTY HAS ANY AUTHORITY, EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT, EXCEPT BY SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COMMISSIONERS COURT OF TRAVIS COUNTY.
10. LICENSOR may terminate this Agreement upon written notice in the event the Facility or Licensed Premises are sold or LICENSOR's underlying agreement to operate the Facility or Licensed Premises should terminate or expire.
11. At LICENSEE's option, LICENSEE may terminate this Agreement or reduce the number of leased parking spaces by giving LICENSOR thirty (30) days advance written notice. LICENSOR may reduce the number of leased parking spaces in increments of 20 spaces, or terminate this Agreement, by giving LICENSEE thirty (30) days advance written notice.

12. The term of this Agreement may be extended beyond the Initial Term on a month to month basis subject to the written agreement of the parties with respect to the License Fee due for such month to month renewal; provided, however, that LICENSEE shall send a written request to LICENSOR at least thirty (30) days prior to expiration of the Initial Term requesting such month to month extension. LICENSOR may accept or decline such request in LICENSOR's sole discretion.
13. In addition, LICENSOR hereby agrees that any Travis County employee has the option to independently contract with LICENSOR to lease a parking space at the same monthly License Fee as that offered to LICENSEE; provided, however, any such independent contracting shall be subject to the availability of spaces in the Facility, as determined by LICENSOR in its sole discretion.
14. If LICENSOR has done business with a Key Contracting Person, as listed in "Exhibit A" to the affidavit attached hereto as Attachment 1 and made a part hereof, during the 365-day period immediately prior to the date of execution of this Agreement by LICENSOR or does business with any such Key Contracting Person at any time after the date of execution of this Agreement by LICENSOR and prior to full performance of this License, LICENSEE shall have the right to terminate this Agreement upon written notice to LICENSOR and any License Fee due for any partial month shall be prorated on a daily basis and refunded to LICENSEE. "Is doing business" and "has done business" shall mean:
  - (i) paying or receiving in any calendar year any money or valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for the purchase of any property or property interest, either real or personal, either legal or equitable; or,
  - (ii) loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;
  - (iii) but does not include:
    - (a) any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the public,
    - (b) any financial services product sold to a Key Contracting Person for personal, family or household purposes in accordance with pricing guidelines applicable to similarly situated individuals with similar risks as determined by LICENSOR in the ordinary course of its business; and

(c) a transaction for a financial service or insurance coverage made on behalf of LICENSOR if LICENSOR is a national or multinational corporation by an agent, employee or other representative of LICENSOR who does not know and is not in a position that he or she should have known about this Agreement.

15. Mediation. When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.
16. Conflict of Interest Questionnaire. If required by Chapter 176, Texas Local Government Code, Licensor shall complete and file the Conflict of Interest Questionnaire with the County Clerk, Elections Division, 5501 Airport Blvd., Austin, Texas 78751. Licensor shall update this Questionnaire by September 1 of each year for the duration of this Contract, as required by Chapter 176 of the Local Government Code. In addition, if any statement on a submitted Questionnaire becomes incomplete or inaccurate, Licensor shall submit an updated Questionnaire. Licensor should note that the law requires the County to provide access to a filed Questionnaire on the official Travis County Internet website.
17. Funding Out. Despite anything to the contrary in this Agreement, if, during budget planning and adoption, Commissioners Court fails to provide funding for this Agreement for the following fiscal year of County, County may terminate this Agreement after giving LICENSOR thirty (30) days written notice that this Agreement is terminated due to the failure to fund it.
18. W-2. LICENSOR shall provide County with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code and its rules and regulations before any Agreement funds are payable.
19. Non-Waiver of Default. The waiver of a breach of any term or condition of this Agreement is not a waiver of a subsequent breach of that term or condition, or a breach or subsequent breach of any other term of condition. No official, agent, employee, or representative of COUNTY may waive any breach of any term of condition of this Agreement unless expressly granted that specific authority by Commissioner Court. All rights of COUNTY under this Agreement are specifically reserved and any payment, act or omission shall not impair or prejudice any

remedy or right to COUNTY under it. Any right or remedy in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

20. Disbursement to Persons with Outstanding Debt. In accordance with Section 154.045 of the Local Government Code, if notice of indebtedness has been filed with the County Auditor or County Treasurer evidencing the indebtedness of LICENSOR to the State, the COUNTY or a salary fund, a warrant may not be drawn on a COUNTY fund in favor of the LICENSOR, or an agent or assignee of LICENSOR until: (i) the County Treasurer notifies LICENSOR in writing that the debt is outstanding; and (ii) the debt is paid. "Debt" includes delinquent taxes, fines, fees, and indebtedness arising from written agreements with the COUNTY. COUNTY may apply any funds COUNTY owes LICENSOR to the outstanding balance of debt for which notice is made as provided herein, if the notice includes a statement that the amount owed by the COUNTY to LICENSOR may be applied to reduce the outstanding debt.

This License shall be effective as of the later date set forth below (the "Effective Date").

LICENSOR: AMPCO Systems Parking, Inc.

By: \_\_\_\_\_  
Lenard Carder  
Executive Vice President

Date: \_\_\_\_\_

LICENSEE: Travis County, Texas

By: \_\_\_\_\_  
Samuel T. Biscoe  
Travis County Judge

Date: \_\_\_\_\_



**ATTACHMENT 1**

STATE OF TEXAS        }  
COUNTY OF TRAVIS    }

**ETHICS AFFIDAVIT**

Date: \_\_\_\_\_  
Name of Affiant: \_\_\_\_\_  
Title of Affiant: \_\_\_\_\_  
Business Name of LICENSOR: \_\_\_\_\_  
County of LICENSOR: \_\_\_\_\_

Affiant on oath swears that the following statements are true:

1. Affiant is authorized by LICENSOR to make this affidavit for LICENSOR.
2. Affiant is fully aware of the facts stated in this affidavit.
3. Affiant can read the English language.
4. LICENSOR has received the list of key contracting persons associated with this solicitation which is attached to this affidavit as Exhibit "A".
5. Affiant has personally read Exhibit "A" to this affidavit.
6. Affiant has no knowledge of any key contracting person on Exhibit "A" with whom LICENSOR is doing business or has done business during the 365-day period immediately before the date of this affidavit.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Address

SUBSCRIBED AND SWORN TO before me by \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public of the  
State of Texas

\_\_\_\_\_  
Printed Name of Notary  
My commission expires: \_\_\_\_\_

**EXHIBIT A to Attachment 1**  
**LIST OF KEY CONTRACTING PERSONS**  
**November 4, 2011**

**CURRENT**

Position Held	Name of Individual Holding Office/Position	Name of Business Individual is Associated
County Judge .....	Samuel T. Biscoe	
County Judge (Spouse) .....	Donalyn Thompson-Biscoe	
Executive Assistant .....	Cheryl Brown	
Executive Assistant .....	Melissa Velasquez	
Executive Assistant .....	Josie Z. Zavala	
Executive Assistant .....	Cheryl Aker	
Commissioner, Precinct 1 .....	Ron Davis	
Commissioner, Precinct 1 (Spouse) .....	Annie Davis	Seton Hospital
Executive Assistant .....	Deone Wilhite	
Executive Assistant .....	Felicitas Chavez	
Commissioner, Precinct 2 .....	Sarah Eckhardt	
Commissioner, Precinct 2 (Spouse) .....	Kurt Sauer	Daffer McDaniel, LLP
Executive Assistant .....	Loretta Farb	
Executive Assistant .....	Joe Hon	
Executive Assistant .....	Peter Einhorn	
Commissioner, Precinct 3 .....	Karen Huber	
Commissioner, Precinct 3 (Spouse) .....	Leonard Huber	Retired
Executive Assistant .....	Garry Brown	
Executive Assistant .....	Lori Duarte	
Executive Assistant .....	Jacob Cottingham*	
Commissioner, Precinct 4 .....	Margaret Gomez	
Executive Assistant .....	Edith Moreida	
Executive Assistant .....	Norma Guerra	
County Treasurer .....	Dolores Ortega-Carter	
County Auditor .....	Susan Spataro, CPA	
County Executive, Administrative .....	Vacant	
County Executive, Planning & Budget .....	Vacant	
County Executive, Emergency Services .....	Danny Hobby	
County Executive, Health/Human Services .....	Sherri E. Fleming	
County Executive, TNR .....	Steven M. Manilla, P.E.*	
County Executive, Justice & Public Safety .....	Roger Jefferies	
Director, Facilities Management .....	Roger El Khoury, M.S., P.E.	
Chief Information Officer .....	Joe Harlow	
Director, Records Mgmt & Communications ..	Steven Broberg	
Travis County Attorney .....	David Escamilla	
First Assistant County Attorney .....	Steve Capelle	
Executive Assistant, County Attorney .....	James Collins	
Director, Land Use Division .....	Tom Nuckols	
Attorney, Land Use Division .....	Julie Joe	
Attorney, Land Use Division .....	Christopher Gilmore	
Director, Transactions Division .....	John Hille	
Attorney, Transactions Division .....	Tamara Armstrong	
Attorney, Transactions Division .....	Daniel Bradford	
Attorney, Transactions Division .....	Mary Etta Gerhardt	
Attorney, Transactions Division .....	Barbara Wilson	

Attorney, Transactions Division ..... Jim Connolly  
 Attorney, Transactions Division ..... Tenley Aldredge  
 Director, Health Services Division ..... Beth Devery  
 Attorney, Health Services Division ..... Prema Gregerson  
 Purchasing Agent ..... Cyd Grimes, C.P.M.  
 Assistant Purchasing Agent ..... Marvin Brice, CPPB  
 Assistant Purchasing Agent ..... Bonnie Floyd, CPPO, CPPB, CTPM  
 Purchasing Agent Assistant IV ..... Diana Gonzalez  
 Purchasing Agent Assistant IV ..... Lee Perry  
 Purchasing Agent Assistant IV ..... Jason Walker  
 Purchasing Agent Assistant IV ..... Richard Villareal  
 Purchasing Agent Assistant IV ..... Patrick Strittmatter\*  
 Purchasing Agent Assistant IV ..... Lori Clyde, CPPO, CPPB  
 Purchasing Agent Assistant IV ..... Scott Wilson, CPPB  
 Purchasing Agent Assistant IV ..... Jorge Talavera, CPPO, CPPB  
 Purchasing Agent Assistant IV ..... George R. Monnat, C.P.M., A.P.P.  
 Purchasing Agent Assistant IV ..... John E. Pena, CTPM  
 Purchasing Agent Assistant III ..... Shannon Pleasant, CTPM\*  
 Purchasing Agent Assistant III ..... David Walch  
 Purchasing Agent Assistant III ..... Michael Long, CPPB  
 Purchasing Agent Assistant III ..... Elizabeth Corey, C.P.M.  
 Purchasing Agent Assistant III ..... Rosalinda Garcia  
 Purchasing Agent Assistant III ..... Loren Breland, CPPB  
 Purchasing Agent Assistant II ..... C.W. Bruner, CTP  
 Purchasing Agent Assistant III ..... Nancy Barchus, CPPB  
 HUB Coordinator ..... Sylvia Lopez  
 HUB Specialist ..... Betty Chapa  
 HUB Specialist ..... Jerome Guerrero  
 Purchasing Business Analyst ..... Scott Worthington  
 Purchasing Business Analyst ..... Jennifer Francis

**FORMER EMPLOYEES**

<u>Position Held</u>	<u>Name of Individual Holding Office/Position</u>	<u>Date of Expiration</u>
County Executive, TNR.....	Joseph Gieselman	01/31/12
Purchasing Agent Assistant IV.....	Oralia Jones, CPPB	07/31/12
County Executive, Planning & Budget .....	Rodney Rhoades	08/19/12

\* - Identifies employees who have been in that position less than a year.