



## Travis County Commissioners Court Agenda Request

**Meeting Date:** September 25, 2012

**Prepared By/Phone Number:** John Carr, 854-4772

**Dept. Head:** Roger El Khoury, M.S., P.E., Director, FMD, 854-4579

**County Executive:** Leslie Browder, Planning and Budget, 854-9106

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

### AGENDA LANGUAGE:

Consider and take appropriate action on license agreement to use the "Old County Jail" in the Heman Marion Sweatt Courthouse to shoot a student film during the period of September 28-30, 2012.

### BACKGROUND/SUMMARY OF REQUEST:

The Facilities Management Department (FMD) received a request from Brett Hill to shoot scenes for a film he is directing and producing in coordination with the Austin School of Film. The tentative title for the film is "Kisses From the Cactus Man". FMD and Ms. Bonner with the County Attorney's office collaborated on the appropriate license which is at Exhibit One. Mr. Hill has signed the license agreement, provided the required proof of insurance coverage and provided a check in the amount of \$300 to cover the three days of access to the Old County Jail. The license agreement will provide for access to set up for the film shoot on Friday, September 28<sup>th</sup> after business hours, and then all day on September 29 and 30 as needed to complete the film shoot. Mr. Hill has also agreed to hire off duty FMD security guards or off duty Sheriff's deputies to be with his crew during the entire time they are in the facility.

### STAFF RECOMMENDATIONS:

Facilities Management Department recommends approval of the license agreement which will allow the film crew to use the vacant 6<sup>th</sup> and 7<sup>th</sup> floors of the HMS Courthouse.

### ISSUES AND OPPORTUNITIES:

Ms. Peg Leidtke, Director of Court Management with the Civil District Courts is aware of the requested use and concurs with the recommendation to approve the license agreement. There are no financial or legal issues that would impact approval of this license agreement.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

\$300 revenue in administrative fees for the license agreement.

**ATTACHMENTS/EXHIBITS:**

1. License Agreement
2. Film Synopsis

**REQUIRED AUTHORIZATIONS:**

Christopher Gilmore/Roxanne Bonner, County Attorney's Office

## **LICENSE AGREEMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

This License Agreement (this "Agreement") is made and entered into by and between Travis County, Texas, a political subdivision of the State of Texas ("County") and Brett Hill in coordination with the Austin School of Film ("Licensee").

### WITNESSETH

THAT WHEREAS, County is the owner of the Heman Marion Sweatt Travis County Courthouse located at 1000 Guadalupe Street, Austin, Texas (the "Property"); and

WHEREAS, Licensee desires to film several scenes in the Old County Jail (located on the seventh floor of the Courthouse) for the purpose of filming a student film, and County desires to allow Licensee use of the Property for such purpose; and

WHEREAS, Licensee fully understands both the historical significance and the security considerations of the Property and intends to fully cooperate and take whatever steps are necessary to minimize all impacts upon the Property during Licensee's use and to restore said Property to its original condition after Licensee has completed filming.

NOW, THEREFORE, County and Licensee, in consideration of the mutual promises herein expressed and the compensation herein agreed to be paid, covenant and agree to and with each other as follows:

#### **1.0 GRANT OF LICENSE**

1.1 County hereby grants a license to Licensee, its employees, agents, independent producers, contractors, and suppliers to enter, use and by means of film, video, tape or any other method, photograph the interior areas of the Property in connection with the production of a short film currently entitled "Kisses From the Cactus Man" (the "License").

1.2 Such production, and all exhibition, distribution, advertising, and exploitation products or services created or produced in connection therewith, shall be the sole property of Licensee, without exception and in perpetuity, and may be exploited in all media and markets and in all forms, whether known, unknown, or hereafter created. The License includes the right to bring onto the Property and to utilize thereon personnel, personal property, materials and equipment, including but not limited to props and temporary sets during the term of the License.

**1.3 Licensee agrees to make no structural changes to any portion of the Property licensed hereunder. However, the License allows for superficial preparation to be made to the Property to facilitate Licensee's storyline and production needs as well as the right to use special effects in furtherance of the storyline. Licensee agrees to leave the Property in the same and as good a condition as when it was received, normal wear and tear excepted, as determined by existing County policy.**

**1.5 Licensee acknowledges and agrees that permission to use the County Property for the purposes described herein may be immediately revoked if the motion picture named above contains any content that, in the opinion of the Travis County Commissioners Court, the Travis County Sheriff, the Facilities Management Department Director, or their designees, is obscene, offensive, defamatory, harassing, malicious or that would reflect adversely on the reputation and dignity of Travis County.**

**1.6 Licensee acknowledges and agrees that Licensee shall be solely responsible at all times for the actions and the safety of those persons utilizing the Property under this Agreement, including, without limitation, protecting such persons from injury or death and protecting County's property and the property of such persons from loss or damage.**

## **2.0 TERM OF LICENSE**

**2.1 The License is granted: for approximately four hours to setup on Friday evening, September 28, 2012 beginning after normal business hours and filming all day Saturday and Sunday, September 29 and September 30, 2012; provided, however, that such dates are subject to postponement and/or rescheduling due to any cause or reason beyond the control of Licensee or as determined to be necessary by County. In addition, Licensee agrees to take all reasonable measures to minimize noise and any other type of interference with or disruption of normal courthouse business for the duration of the license term.**

## **3.0 PAYMENT TO COUNTY**

**3.1 In consideration of the License granted hereunder, Licensee shall pay to Travis County the amount of ONE HUNDRED DOLLARS AND NO/100 (\$100.00) per day from September 28, 2012 through September 30, 2012 for a total of THREE HUNDRED DOLLARS AND NO/100 (\$300.00) to cover County's administrative, utilities and related costs.**

**3.2 In addition, Licensee shall provide, at its own additional expense, and if appropriate given the License scope, traffic control, garbage removal, and security personnel through the employment of the necessary number of off-duty Travis County Sheriff's officers, or other qualified security personnel, as well as at least one dedicated person from FMD security or off-duty TSCO personnel to be with the film crew anytime during Licensee's use of the Property as reasonably necessary to ensure the safety and**

integrity of the persons and property brought onto the Property for the purposes authorized under this Agreement.

**3.3 Licensee shall pay County the sum set forth in this Section 3.0 within ten (10) days of execution of this Agreement. If there are any expenses incurred by County above the expenses set forth herein, County shall invoice Licensee for the actual costs so incurred, and Licensee shall remit payment to County for the invoice amounts within thirty (30) days of receipt of invoice(s).**

#### **4.0 SMOKING**

**4.1 THERE SHALL BE NO SMOKING IN THE COURTHOUSE AT ANY TIME. LICENSEE AGREES NOT TO USE ANY EQUIPMENT OR MATERIAL THAT IS INTENDED TO PRODUCE AN OPEN FLAME.**

#### **5.0 PERMITS**

**5.1 Licensee shall be solely responsible for the costs and the securing of any permits required by the City of Austin or other local governmental entities for use of the Property under this Agreement.**

#### **6.0 USE AND REPAIRS**

**6.1 Licensee shall not use the Property for any purpose other than that set forth herein. Further, Licensee shall repair or replace any damage to the Property caused by Licensee.**

#### **7.0 CONTROL OF TRAVIS COUNTY**

**7.1 Licensee shall at all times obey the direction and commands of the Travis County Sheriff and the Facilities Management Department Director, or their designated representatives, while on or in the vicinity of the Property.**

**7.2 Any disregard of the directions, restrictions, rules or regulations referenced in this Section 7 shall be grounds for immediate revocation of the License granted hereunder.**

#### **8.0 INDEMNIFICATION**

**8.1 LICENSEE AGREES TO AND SHALL INDEMNIFY, SAVE AND HOLD HARMLESS, AND DEFEND COUNTY, ITS AGENTS, OFFICIALS AND EMPLOYEES FROM ANY AND ALL NEGLIGENCE, LIABILITY, LOSS, COSTS, CLAIMS, INCLUDING ATTORNEYS FEES, OR EXPENSES OF WHATEVER TYPE OR NATURE FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE, ARISING IN WHOLE OR IN PART OUT OF ANY AND ALL ACTS OF COMMISSION OR OMISSION OF LICENSEE, ITS AGENTS OR EMPLOYEES, ARISING OUT OF IN**

**CONNECTION WITH THIS AGREEMENT OR LICENSEE'S USE OF THE PROPERTY FOR WHICH A CLAIM, INCLUDING ATTORNEYS FEES, DEMAND, SUIT OR OTHER ACTION IS MADE OR BROUGHT BY ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY AGAINST LICENSEE OR COUNTY.**

## **9.0 INSURANCE**

**9.1 Without in any way limiting the liability of Licensee or its obligations under this Agreement, Licensee agrees to maintain during the term of the License Commercial General Liability Insurance with a combined minimum Bodily Injury and Property Damage limits of \$600,000 per occurrence and \$1,000,000 in the aggregate, with Travis County named as an additional insured. Licensee has provided County with a certificate from its carrier evidencing such insurance, which certificate is attached hereto as Exhibit A and made a part hereof.**

## **10.0 NON-ASSIGNMENT OF RIGHTS**

**10.1 Licensee may not assign this Agreement or any portion or right thereof without the prior written consent of County; provided, however, Licensee shall have the right to grant, assign and transfer all or any part of its right, title and interest in the film production, in whole or in part, including all copyrights, rights of publicity, trademarks and all other legal interests and rights.**

## **11.0 AMENDMENTS**

**11.1 This Agreement may be amended only by written instrument signed by both County and Licensee. IT IS EXPRESSLY ACKNOWLEDGED BY LICENSEE THAT NO OFFICER, AGENT, REPRESENTATIVE OR EMPLOYEE OF TRAVIS COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO MODIFY OR AMEND THE TERMS OF THIS AGREEMENT UNLESS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY BY THE COMMISSIONERS COURT OF TRAVIS COUNTY.**

## **12.0 SAFETY**

**12.1 County reserves the right to prohibit persons from driving on, entering or otherwise using the Property at any time safety may be a concern.**

## **13.0 NON-WAIVER AND RESERVATION OF RIGHTS**

**13.1 No act or omission by Licensor may constitute or be construed as a waiver of any breach or default of Licensee which then exists or may subsequently exist. The failure of either party to exercise any right or privilege granted in this Agreement shall not be construed as a waiver of that right or privilege.**

**13.2** All rights of Licensor under this Agreement are specifically reserved and any act or omission shall not impair or prejudice any remedy or right of Licensor under it. Any right or remedy stated in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement, the law or at equity, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

#### **14.0 VENUE AND CHOICE OF LAW**

**14.1** The obligations and undertakings of each of the parties to this Agreement are performable in Travis County, Texas, and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate court of Travis County, Texas.

#### **15.0 NOTICES**

**15.1** Written Notice. Any notice required or permitted to be given under this Agreement by one Party to the other shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the address set forth in this section for the Party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the Party at the address hereinafter specified.

**15.2** Licensee Address. The address of Licensee for all purposes under this Agreement shall be:

**Brett Hill  
Director/Producer  
1505 W. 12<sup>th</sup> Street  
Austin, Texas 78703  
(604)-312-2703**

**Brett Hill  
Director/Producer  
134 Hidden Creek Heights  
Calgary, AB  
Canada  
T3A6K9**

**15.3** Licensor Address. The address of Licensor for all purposes and all notices under this Agreement shall be:

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

**15.4 Change of Address.** Each Party may change the address for notice to it by giving notice of the change in compliance with this Section.

**16.0 MEDIATION**

**16.1** 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.

**17.0 SEVERABILITY**

**17.1** If any portion or portions of this Agreement are ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of it shall remain valid and binding.

**18.0 ENTIRETY OF AGREEMENT**

**18.1** This Agreement represents the sole, entire and integrated Agreement between County and Licensee with respect to the subject matter herein and supersedes all prior negotiations, representatives, or agreements either oral or written.

**IN WITNESS WHEREOF,** Licensor and Licensee have duly executed this Agreement effective as of the later date set forth below (the "Effective Date").

**TRAVIS COUNTY, TEXAS**

**LICENSEE:**

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

By:   
Brett Hill  
Title: Director/Producer

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

Date: 9-13-2012



**Exhibit A  
Insurance**

**UNIONVILLE INSURANCE BROKERS**  
**A Division of**  
**The CG&B Group Inc.**  
 120 South Town Centre Blvd.,  
 Markham, Ontario L6G 1C3

**CERTIFICATE OF INSURANCE**

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This Certificate does not amend, extend or alter the coverage afforded by the policies listed.

**NAMED INSURED:** Vlad Horodinca  
**MAILING ADDRESS:** 6-1485 Maple Street Vancouver BC V6J 3S1  
**TITLE OF PRODUCTION:** Kisses From The Cactus Man / Additional Insured - Brett Hill

COVERAGE	INSURER	POLICY NO.	POLICY TERM	LIMITS OF LIABILITY
COMMERCIAL GENERAL LIABILITY (including cross liability)	RSA	95143350-PA	September 30, 2011 to September 30, 2012	\$ 2,000,000 inclusive, bodily injury and property damage
Employers Liability				\$ 2,000,000 Products & Completed Operations Aggregate
				\$ 5,000,000 Annual Aggregate
				\$ 100,000
<i>Certificate Holder is added as an Additional Insured, but only with respect to the operations of the Named Insured</i>				

This is to certify that the Policies of Insurance listed herein have been issued to the above Named Insured and are in force at this time. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this Certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, conditions and exclusions of this Policy.

Should these policies be cancelled before the expiration date thereof, the issuing company will endeavour to mail 30 days written notice of cancellation to the below named Certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind on the company.

**CERTIFICATE HOLDER:**

**TRAVIS COUNTY**  
**314 WEST 11<sup>TH</sup>, SUITE 420**  
**AUSTIN, TX 78745**

Signed on behalf of the Insurers shown above



August 30, 2012

\_\_\_\_\_  
 Authorized Representative

\_\_\_\_\_  
 Date

## Synopsis – “Kisses From the Cactus Man”

On a record setting summer night in Texas, the domesticated wife of a prison warden, who spends her long lonesome days fantasizing over old classic films, delivers a meal to her husband before his night shift.

After a short visit with her husband she goes to leave but realizes she forgot her keys. When she returns to claim them, the door is locked as a prison staff meeting takes place behind the door. She waits and waits and waits...

The sound of distant music captures her attention and she moves towards it to inquire. She finds herself at the cell of one inmate, Doby Damme, a brash man much like the men in the classic films she watches daily. Caught between fantasy and reality, the Warden's wife entertains a conversation with the inmate as if he is a character from her favorite film.