



Travis County Commissioners Court Agenda Request

Meeting Date: September 4, 2012

Prepared By/Phone Number: Heather M. Kellum, 854-9048

Elected/Appointed Official/Dept. Head: Herb Evans, JP5

Commissioners Court Sponsor: Samuel T Biscoe, County Judge

AGENDA LANGUAGE:

Consider and take appropriate action on amendment to OMNIbase Failure to Appear interlocal with DPS.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

DPS is requesting an amendment to the agreement based upon a recent change in the law. Prior to the change, section 706.005 of the Transportation Code required a political subdivision to send a clearance report to DPS when there was no longer cause to continue to deny renewal of a person's driver's license, but the statute did not specify how soon that clearance report must be sent. By administrative rule (37 TAC 15.118), DPS had determined that the clearance report should be sent to the department within 5 business days and that is what is written into our existing agreement. The legislature recently amended section 706.005 to state that a political subdivision shall immediately notify DPS when there is no cause to continue to deny renewal of a person's driver's license.

All five Travis County JP's concur.

Amendment requiring signature is attached.

STAFF RECOMMENDATIONS: Staff recommends approval.

ISSUES AND OPPORTUNITIES: N/A

FISCAL IMPACT AND SOURCE OF FUNDING: N/A

REQUIRED AUTHORIZATIONS:

Jim Connolly, 854-9539; Judge Herb Evans, 854-9049; Judge Yvonne Williams, 854-7700; Judge Glenn Bass, 854-4521; Judge Susan Steeg, 854-6763; Judge Raul A. Gonzalez, 854-9479

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by **Tuesdays at 5:00 p.m.** for the next week's meeting.

From: Herb Evans, JP5



To: The Hon. Sam Biscoe
Travis County Judge

Date: 08/27/12

Re: Amendment to OMNibase Interlocal Contract with DPS

Judge Biscoe, as you may recall, the OMNibase contract with DPS is a mainstay of our Travis County collections effort. We report to DPS those folks who don't come to court or who fail to pay their tickets. DPS then requires that delinquent cases be resolved before a person can renew his or her driver's license.

This last legislature amended the requirement that we notify DPS within 5 days after a defendant clears his or her cases with us; now we are required to notify DPS immediately.

The attached contract is drafted by DPS to satisfy that change in the law. All five of your JP's concur, as does Mr. Jim Connolly at the County Attorney's Office.

"Department" or "TDPS" means the Texas Department of Public Safety.

"Failure to Appear Program" or "FTA Program" refers to the implementation efforts of all parties, including those system components provided by the TDPS, local political subdivisions and the Vendor, including the FTA System.

"Failure to Appear System" or "FTA System" refers to the goods and services, including all hardware, software, consulting services, telephone and related support services, supplied by the Vendor.

"FTA Software" refers to computer software developed or maintained now or in the future by the Vendor to support the FTA System.

"Originating Court" refers to the court in which an applicable violation has been filed for which a person has failed to appear or failed to pay or satisfy a judgment and which has submitted an appropriate FTA Report.

"State" refers to the State of Texas.

"Local political subdivision" refers to a city or county of the State of Texas.

Unless otherwise defined, terms used herein shall have the meaning assigned by Texas Transportation Code Chapter 706 or other relevant statute. Terms not defined in this Contract or by other relevant statutes shall be given their ordinary meanings.

IV. Governing Law

This Contract is entered into pursuant to Texas Government Code Chapter 791 and is subject to the laws and jurisdiction of the State of Texas and shall be construed and interpreted accordingly.

V. Venue

The parties agree that this Contract is deemed performable in Travis County, Texas, and that venue for any suit arising from the interpretation or enforcement of this Contract shall lie in Travis County, Texas.

VI. Application and Scope of Contract

This Contract applies to each FTA Report submitted to and accepted by the TDPS or the Vendor by the local political subdivision pursuant to the authority of Texas Transportation Code Chapter 706.

VII. Required Warning on Citation for Traffic Law Violations

A peace officer authorized to issue citations within the jurisdiction of the local political subdivision shall issue a written warning to each person to whom the officer issues a citation for a traffic law violation. This warning shall be provided in addition to any other warnings required by law. The warning must state in substance that if the person fails to appear in court for the prosecution of the offense or if the person fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court, the person may be denied renewal of the person's driver license. The written warning may be printed on the citation or on a separate instrument.

VIII. FTA Report

If the person fails to appear or fails to pay or satisfy a judgment as required by law, the local political subdivision may submit an FTA Report containing the following information:

- (1) the jurisdiction in which the alleged offense occurred;
- (2) the name of the local political subdivision submitting the report;
- (3) the name, date of birth and Texas driver license number of the person who failed to appear or failed to pay or satisfy a judgment;
- (4) the date of the alleged violation;
- (5) a brief description of the alleged violation;
- (6) a statement that the person failed to appear or failed to pay or satisfy a judgment as required by law;
- (7) the date that the person failed to appear or failed to pay or satisfy a judgment;
- and
- (8) any other information required by the TDPS.

There is no requirement that a criminal warrant be issued in response to the person's failure to appear. The local political subdivision must make reasonable efforts to ensure that all FTA Reports are accurate, complete and non-duplicative.

IX. Clearance Reports

The originating court that files the FTA Report has a continuing obligation to review the report and promptly submit appropriate additional information or reports to the Vendor or the TDPS. The clearance report shall identify the person, state whether or not a fee was required, advise the TDPS to lift the denial of renewal and state the grounds for the action. All clearance reports must be submitted immediately from the time and date that the originating court receives appropriate payment or other information that satisfies the citizen's obligation to that court.

To the extent that a local political subdivision utilizes the FTA Program by submitting an FTA Report, there is a corresponding obligation to collect the statutorily required \$30.00 administrative fee. If the person is acquitted of the underlying offense for which the original FTA Report was filed, the originating court shall not require payment of the administrative fee. The local political subdivision shall submit a clearance report immediately advising the TDPS to lift the denial of renewal and identifying the grounds for the action.

The local political subdivision must immediately file a clearance report upon payment of the administrative fee and:

- (1) the perfection of an appeal of the case for which the warrant of arrest was issued or judgment arose;
- (2) the dismissal of the charge for which the warrant of arrest was issued or judgment arose;
- (3) the posting of a bond or the giving of other security to reinstate the charge for which the warrant was issued;
- (4) the payment or discharge of the fine and cost owed on an outstanding judgment of the court; or
- (5) other suitable arrangement to pay the fine and cost within the court's discretion.

The TDPS will not continue to deny renewal of the person's driver license after receiving notice from the local political subdivision that the FTA Report was submitted in error or has been destroyed in accordance with the local political subdivision's record retention policy.

X. Compliance with Law

The local political subdivision understands and agrees that it will comply with all local, state and federal laws in the performance of this Contract, including administrative rules adopted by the TDPS.

XI. Accounting Procedures

An officer collecting fees pursuant to Texas Transportation Code §706.006 shall keep separate records of the funds and shall deposit the funds in the appropriate municipal or county treasury. The custodian of the municipal or county treasury may deposit such fees in an interest-bearing account and retain the interest earned thereon for the local political subdivision. The custodian shall keep accurate and complete records of funds received and disbursed in accordance with this Contract and the governing statutes.

The custodian shall remit \$20.00 of each fee collected pursuant to Texas Transportation Code §706.006 to the Comptroller on or before the last day of each

calendar quarter and retain \$10.00 of each fee for payment to the Vendor and credit to the general fund of the municipal or county treasury.

XII. Payments to Vendor

The TDPS has contracted with OmniBase Services of Texas ("Vendor"), a corporation organized and incorporated under the laws of the State of Texas, with its principal place of business in Austin, Texas, to assist with the implementation of the FTA Program.

Correspondence to the Vendor may be addressed as follows:

OmniBase Services of Texas
7320 North Mo Pac Expressway, Suite 310
Austin, Texas 78731
(512) 346-6511 ext. 100; (512) 346-9312 (fax)

The local political subdivision must pay the Vendor a fee of \$6.00 per person for each violation which has been reported to the Vendor and for which the local political subdivision has subsequently collected the statutorily required \$30.00 administrative fee. In the event that the person has been acquitted of the underlying charge, no payment will be made to the Vendor or required of the local political subdivision.

The parties agree that payment shall be made by the local political subdivision to the Vendor no later than the last day of the month following the close of the calendar quarter in which the payment was received by the local political subdivision.

XIII. Litigation and Indemnity

In the event that the local political subdivision is aware of litigation in which this Contract or Texas Transportation Code Chapter 706 is subject to constitutional, statutory, or common-law challenge, or is struck down by judicial decision, the local political subdivision shall make a good faith effort to notify the TDPS immediately.

Each party may participate in the defense of a claim or suit affecting the FTA Program, but no costs or expenses shall be incurred for any party by the other party without written consent.

To the extent authorized by law, the local political subdivision City agrees to indemnify and hold harmless the TDPS against any claims, suits, actions,

damages and costs of every nature or description arising out of or resulting from the performance of this Contract, and the local political subdivision City further agrees to satisfy any final judgment awarded against the local political subdivision City or the TDPS arising from the performance of this Contract, provided said claim, suit, action, damage, judgment or related cost is not attributed by the judgment of a court of competent jurisdiction to the sole negligence of the TDPS.

It is the agreement of the parties that any litigation involving the parties to this Contract may not be compromised or settled without the express consent of the TDPS, unless such litigation does not name the TDPS as a party.

This section is subject to the statutory rights and duties of the Attorney General for the State of Texas.

XIV. Contract Modification

No modifications, amendments or supplements to, or waivers of, any provision of this Contract shall be valid unless made in writing and executed in the same manner as this Contract.

XV. Severability

If any provision of this Contract is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable. This Contract shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance therefrom.

XVI. Multiple Counterparts

This Contract may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitutes, collectively, one Contract. But, in making proof of this Contract, it shall not be necessary to produce or account for more than one such counterpart.

XVII. Effective Date of Contract

This Contract shall be in effect from and after the date that the final signature is set forth below. This Contract shall automatically renew on a yearly basis. However, either party may terminate this Contract upon thirty days written notice to the other party. Notice may be given at the following addresses:

Local political subdivision

Texas Department of Public Safety
Attn: Enforcement and Compliance Service
5805 North Lamar Boulevard
Austin, Texas 78773-0001
(512) 424-5311 [fax]

Notice is effective upon receipt or three days after deposit in the U. S. mail, whichever occurs first. After termination, the local political subdivision has a continuing obligation to report dispositions and collect fees for all violators in the FTA System at the time of termination.

**TEXAS DEPARTMENT OF
PUBLIC SAFETY**

Sheri Gipson
Deputy Administrator

Date

LOCAL POLITICAL SUBDIVISION*

Authorized Signature

Title

Date

*An additional page may be attached if more than one signature is required to execute this Contract on behalf of the local political subdivision. Each signature block must contain the person's title and date.