



## Travis County Commissioners Court Agenda Request

**Meeting Date:** April 16, 2013

**Prepared By/Phone Number:** Shawn Malone 854-7627

**Elected/Appointed Official/Dept. Head:** Steven Broberg, Director, RMCR  
854-9575

**Commissioners Court Sponsor:** Judge Biscoe

### **AGENDA LANGUAGE:**

**CONSIDER AND TAKE APPROPRIATE ACTION ON PROPOSED CONTRACT WITH HPN BOOKS TO SPONSOR A COFFEE TABLE BOOK ABOUT TRAVIS COUNTY**

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

Coffee table book publisher HPN Books has proposed that Travis County government sponsor publication of a book about Travis County. The County would request letter endorsements for the project from prominent individuals and groups in Travis County. Additionally, the County would agree to have an officer of the County sign letters addressed to Travis County business leaders inviting them to participate with business history/profile sponsorships. In return, the County would receive a share of the revenues earned from the book sales.

### **STAFF RECOMMENDATION:**

Approval of the attached contract is recommended, with the proviso that revenues generated thereby will fund the Travis County Archives Program.

### **ISSUES AND OPPORTUNITIES:**

If Commissioners Court approves this contract, HPN will publish a hardcover 9" X 12" book about Travis County, with text and photographs produced by professionals hired by HPN and approved by Travis County staff. It will be printed on high quality book stock and case bound with standard hard covers and a full color dust jacket. All pages will be printed in color. Travis County shall have total discretion over all editorial content of

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

the book and shall also have veto privileges over the inclusion of any business that buys a sponsorship in the back of the book.

The first half of the book will be the showcase editorial on Travis County. The second half of the book will be made up of business profiles. These profiles will be about the businesses that pay HPN for this kind of advertising. The length of the book will be based on the number of profile pages to be included. No more than fifty percent of the book will be taken up by business profile pages.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

Travis County is not being asked to fund publication of the book; approval of the contract would allow Travis County to receive a share of the revenue generated by HPN. The publisher will pay a six percent royalty on the first \$175,000 (net) collected for the business profiles, then a ten percent royalty on collections above that amount. In addition, HPN will pay Travis County a book royalty of five percent of revenues received from the sale of books that are sold before the publication of the book's first hard-cover edition. Travis County will receive 500 hard-cover copies of the book at no cost.

**REQUIRED AUTHORIZATIONS:**

County Attorney's Office: Assistant County Attorney Daniel Bradford

## **AGREEMENT BETWEEN TRAVIS COUNTY AND HPN BOOKS FOR PUBLISHING SERVICES**

This contract is entered into between Travis County government ("County"), a government entity formed and existing under the laws of the State of Texas, acting by and through the Travis County Commissioners Court, and Lammert Inc. dba HPN Books ("Publisher") for the purposes of publishing a hardcover pictorial CITYSCAPE book on Travis County.

1. **PUBLISHER.** Publisher accepts the responsibility of publishing the pictorial CITYSCAPE book on County according to these terms and conditions.
2. **TERM/SALES PERIOD.** Publisher agrees to complete the project within twenty four (24) months from the date that the contract is executed. The Parties agree that an extension of time may be granted if reasonable cause is provided to County for the extension.
3. **SPECIFICATIONS.** The book will have oversized pages (9" X 12") and will be printed on high quality book stock and case bound with standard hard cover and full color dust jacket. All pages will be printed in color. The book will be formatted with the showcase editorial on Travis County in the front pages and business profiles in the back pages of the book. The length of the book will be based on the number of profile pages to be included. No more than fifty percent (50%) of the book will be taken up by profile pages. Content of the book will be color photography and text that will portray the economy and lifestyle of Travis County in a positive, informative manner.
4. **PHOTOGRAPHY.** Publisher will contract with a local photographer to produce original photography for the book. Publisher will strongly consider a photographer recommended by County for the position. In addition, various sources of stock photography may be used in the book.
5. **EDITORIAL CONTENT AND CONTROL.**
  - 5.1. Publisher will contract with a well respected and credible writer and/or make every effort to acquire a well-known County personality to write the text for the book. Publisher will strongly consider a writer or writers recommended by County for the position. County has the right of approval of the writer.
  - 5.2. County shall have total discretion over all editorial content of the book and shall also have veto privileges over the inclusion of any business in the business profile section.
  - 5.3. The content of the book will be designed to intelligently and positively give an historic picture of County as well as tell the story of what it is to live, work and play here, and the diversity of the county. It will include information and photography that will make it a valuable printed piece to promote economic development in County.
  - 5.4. Steven Broberg, or his successor in office, will be the County representative responsible for exercising the powers of this section.

6. BUSINESS SPONSOR FUNDED. The entire project will be funded by the sale of business history profiles, which will be handled by representatives of Publisher. No outlay of funds will be required of County for any aspect of the project.
  
7. ROYALTY AND COPIES.
  - 7.1. Publisher will pay to County a royalty according to the following schedule, based upon net collection of cash revenues for business/history profiles:
    - 7.1.1. six percent (6%) of the first \$175,000 collected;
    - 7.1.2. 10 percent (10%) of revenues collected over \$175,000.
  - 7.2. Royalty will be paid to County twice monthly through the sales campaign as revenues are received by Publisher. Publisher agrees to provide County with a monthly report showing all revenue received by publisher each month including a calculation of the amount owed to County.
  - 7.3. In addition to the royalty due County in 7.1 above, Publisher will pay to County a book royalty of five percent (5%) of revenues received from the sale of books that are sold before the publication of the book's first hard-cover edition.
  - 7.4. County will receive a total of five hundred (500) hard-cover copies of the book at no cost and may purchase additional books at the publisher's cost plus 10%, provided that they are ordered prior to the initial printing.
  - 7.5. No royalty will be due and payable to County for business/history profiles bartered for goods and services (i.e. lodging and food for sales representatives). The monthly report described in 7.2 above will include notice when bartered goods and/or services are provided.
  - 7.6. Publisher will provide County with a digital version of the book in portable document format (pdf).
  
8. NAME. A title for the book which is mutually acceptable to Publisher and County will be selected. This title will remain the property of Publisher.
  
9. PROOFS. Publisher will furnish County proofs of all pages prior to printing. Publisher will not print any page that has not been approved by County.
  
10. CONFIDENTIAL INFORMATION.
  - 10.1 County agrees not to disclose any confidential information concerning the affairs of Publisher to any third party unless required to by the Texas Public Information Act or other law.
  - 10.2 Publisher warrants represents and undertakes not to disclose any confidential information concerning the affairs of County to any third party.

Any information or documents Publisher uses in performing the services provided under this Contract that Publisher considers confidential or proprietary or that contains trade

secrets must be clearly marked accordingly. This marking must be explicit as to the designated information. The designation, however, may not necessarily guarantee the nonrelease of the documents or information under the Texas Open Records Act or otherwise required by law.

11. ASSISTANCE WITH PROMOTION.

- 11.1. County agrees to request letter endorsements for the project from prominent individuals and groups in Travis County. Additionally, County agrees to have an officer of County sign letters addressed to Travis County business leaders inviting them to participate with business history/profile sponsorships.
- 11.2. Publisher will provide County with sample letters.
- 11.3. County specifically grants to Publisher the right to use County's name and logo, with prior approval, in any appropriate way in the promotion of the book and the sale of business profile sponsorships.

12. PUBLISHER CAMPAIGN TO PROMOTE AND MARKET BOOKS.

- 12.1. Publisher will engage the services of a professional public relations consultant to conduct a planned campaign to encourage purchase of the books, upon publication. Included in this campaign will be informational media contact, arranging media interviews with the author and photographer, arranging media interviews with County officials, book signing events attended by the author and photographer and County officials, contact with book buyers for all book stores in Travis County. Publisher will execute a comprehensive written marketing plan for the book project which is attached hereto and incorporated by reference as Exhibit A.
- 12.2. Publisher will make books available through the national book distributor, Partners Distributing, so they can be purchased by major book stores, libraries, hotel/motel chains, tour companies and agencies and department stores. Publisher will task its retail book sales manager to promote and encourage book stores to stock the book and to display it with premium display space.

13. TERMINATION. County reserves the right to terminate this Contract for reasonable cause immediately, in whole or in part, at its sole discretion. Reasonable cause is defined as a criminal act committed by Publisher and/or its employees relative to this contract, or a material breach of this contract without the attempt by Publisher to remedy such material breach within a reasonable amount of time after Publisher is notified in writing by the County of said breach, or gross negligence committed by Publisher, and/or its employees, that causes the reputation of County to be damaged. If the contract is terminated for reasonable cause prior to the book being published, Publisher agrees to return all revenue collected from business profiles to the respective businesses. If the contract is terminated for reasonable cause after the book is published, County agrees to return amounts received from Publisher under this contract as revenue, to

Publisher. County agrees to remit those funds to Publisher within a reasonable time after receiving written notice.

14. APPEARANCE RELEASE. Publisher agrees to obtain an "Appearance Release" from individuals whereby consent is required to photograph and exploit the material.
15. SOVEREIGN IMMUNITY. This Agreement is expressly made subject to County's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code, and all applicable federal and state law. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver or any immunities from suit or from liability that the County has by operation of law.
16. INDEMNIFICATION.
  - 16.1 Publisher acknowledges and agrees that County is prohibited by Article XI, Section 7 of the Constitution from indemnifying it or any other third party for damages arising under this Agreement.
  - 16.2 General. **PUBLISHER AGREES TO HOLD COUNTY, ITS OFFICERS, EMPLOYEES, AND AGENTS HARMLESS FROM AND INDEMNIFY IT AGAINST ANY AND ALL CLAIMS, ACTIONS, DAMAGES, SUITS, PROCEEDINGS, JUDGMENTS, AND LIABILITIES, INCLUDING ATTORNEY FEES, FOR PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE RESULTING FROM ACTS OR OMISSIONS OF PUBLISHER OR ITS AGENTS.**
  - 16.3 Intellectual Property Indemnity. **PUBLISHER, AT ITS OWN EXPENSE, WILL INDEMNIFY, SAVE, HOLD HARMLESS AND DEFEND COUNTY AND ITS OFFICERS, EMPLOYEES AND AGENTS AGAINST ANY AND ALL LOSSES, LIABILITIES, JUDGMENTS, AWARDS AND COSTS, INCLUDING LEGAL FEES AND EXPENSES, ARISING OUT OF OR IN CONNECTION WITH ANY ACTION OR CLAIM BROUGHT AGAINST COUNTY THAT PUBLISHER'S ACTIVITIES UNDER THIS CONTRACT INFRINGE OR VIOLATE ANY PATENTS, COPYRIGHTS, LICENSE OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHT; PROVIDED THAT CONTRACTOR IS IMMEDIATELY GIVEN NOTICE OF SUCH CLAIM. CONTRACTOR WILL HAVE THE RIGHT TO CONTROL THE DEFENSE OF ALL SUCH CLAIMS, LAWSUITS AND OTHER PROCEEDINGS. IN NO EVENT SHALL COUNTY SETTLE ANY SUCH CLAIM, LAWSUIT OR PROCEEDING WITHOUT CONTRACTOR'S PRIOR WRITTEN APPROVAL.**
17. RIGHT OF REVIEW AND AUDIT. County may review any and all of the services performed by Publisher under this Contract. County is hereby granted the right to audit, at County's expense and election, all of Publisher's records and billings relating to the performance of this Contract. Publisher agrees to retain such records for a minimum of three (3) years following completion of this Contract.
18. COMPLIANCE WITH LAWS AND VENUE. In providing services required by this Contract, Publisher must observe and comply with all licenses, legal certifications, or

inspections required for the services, facilities, equipment, or materials, and all applicable federal, State, and local statutes, ordinances, rules, and regulations. Texas Law shall govern this Contract and exclusive venue shall lie in Travis County, Texas.

19. **ASSIGNMENT.** During the term of this Contract, Publisher may not sell, assign, transfer or convey this Contract without the written consent of County. Should County authorize Publisher to subcontract (assign) any portion of this Contract, Publisher will maintain the ultimate legal responsibility for all services according to contract specifications. In the event of a subcontract, Publisher shall maintain a continuous effective business relationship with the subcontractors(s) including, but not limited to, regular payments of all monies owed to any subcontractors(s). In the event of failure by Publisher to comply with these requirements, County may, at its option, terminate this Contract.

Publisher understands and agrees that in the event that all or substantially all of Publisher's assets are acquired by another entity, Publisher is still obligated to fulfill the terms and conditions of this Contract. However, in the event of the assignment or sale of Publisher's assets, County, at its option, may terminate or renegotiate the terms of this Contract.

20. **RECOGNITION.** County will be recognized in the book with County name incorporated into the cover design and with a one-page profile in the book. In addition, Publisher will make available space in the book to list County officials.
21. **MEDIATION.** When mediation is acceptable to both parties in resolving a dispute arising under this Contract, 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 section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.
22. **SIGNATORY WARRANTY.** The parties represent that each has the full right, power and authority to enter and perform this Contract in accordance with all of the terms and conditions, and that the execution and delivery of this Contract has been made by authorized representatives of the parties to validly and legally bind the parties to all terms, performances and provisions set forth in this Contract.
23. **INDEPENDENT RELATIONSHIP.** This Contract is not intended to create, nor may it be deemed or construed to create, any relationship among or between the parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Contract. Agents or employees of any party will not be deemed the employee or agent of another party.

24. NOTICE. Any notice required or permitted to be given under this contract by one party to the other must be in writing and must be addressed as specified below. Notice will be deemed to have been received if the party giving notice personally delivers the notice to the appropriate address, 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.

County Address. Honorable Samuel T. Biscoe (or his successor in office); County Judge;  
P.O. Box 1748; Austin, Texas

Contractor Address:

COUNTY:

PUBLISHER:

BY: Samuel T. Biscoe  
Travis County Judge

BY: Ron Lammert  
President

Approved as to Form:

BY: Daniel Bradford  
Assistant County Attorney

