

Item 17



Travis County Commissioners Court Agenda Request

Meeting Date: June 11, 2013

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

A handwritten signature in black ink, appearing to read "Roger El Khoury", with the initials "RKB" written below it.

AGENDA LANGUAGE:

Consider and take appropriate action on a proposed license agreement with Allan-Thrasher, L.L.C., to use the County owned parking lot at 416 W. 11th Street from date of approval through April 30, 2014 during hours the parking lot is not required for County use.

BACKGROUND/SUMMARY OF REQUEST:

Facilities Management Department (FMD) was approached by Mr. Dan Ross with the Allan House about the possibility of leasing the County owned parking lot at 416 W. 11th Street for use of their guests. The Allan House is located at 1104 San Antonio Street, directly to the west of the County owned parking lot. The requested use would be as needed for events and would only occur after County business hours during the week or on weekends, at times the parking would not be needed for County employees. Mr. Ross indicates that they would be agreeable to a charge of \$100 for each event where they used the County lot.

FMD coordinated with Christopher Gilmore of the County Attorney's office to prepare the proposed license agreement at Attachment One. The term of the license agreement will be from date of approval until April 30, 2014. Under the terms of the agreement, Allan-Thrasher, L.L.C., (Licensee) is required to contact FMD in writing with three days written notice of an event when they wish to use the parking lot. Within three days prior to event, Licensee is also required to pay the \$100 event fee, made out to Travis County. The type events held at the Allan House that might require additional parking includes weddings, receptions, corporate functions and charitable events. Licensee had provided proof of the required insurance coverage as attached as Exhibit B of the license agreement.

STAFF RECOMMENDATIONS:

Facilities Management Department recommends approval of the license agreement between Travis County and Allan-Thrasher, L.L.C.

ISSUES AND OPPORTUNITIES:

The County recently bought the property including the parking lot at 416 W. 11th Street. A new facility is in the planning stage and is anticipated to begin construction in May 2014. Until that time, that parking lot is used for employee parking during County business hours, but is not used after hours and on weekends. Allowing the Allan House to use the parking would make use of the parking asset and provide revenue to the County.

FISCAL IMPACT AND SOURCE OF FUNDING:

\$100 in revenue for each use of the parking lot.

ATTACHMENTS/EXHIBITS:

License Agreement

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 Allan-Thrasher, L.L.C., a Texas limited liability company ("Licensee").

WITNESSETH

WHEREAS, County is the owner of certain property located at 416 W. 11th Street, Austin, Texas (the "Property"); and

WHEREAS, Licensee desires to exercise certain rights and privileges on a portion of the Property, specifically to provide additional event parking, and County desires to grant such permission to Licensee under the terms and condition set forth herein;

NOW, THEREFORE, County and Licensee, in consideration of the mutual promises herein expressed and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, covenant and agree to and with each other as follows:

1.0 GRANT OF LICENSE

1.1 County grants a License (the "License") to Licensee to enter, use and occupy that portion of the Property designated on **Exhibit A**, attached to this Agreement and made a part of this Agreement for all purposes (the "Licensed Area"), for the purpose of providing additional event parking for the Allan House ("Licensed Use").

1.2 Licensee agrees to make no structural changes to any portion of the Licensed Area. Licensee agrees to leave the Licensed Area in the same and as good a condition as when it was received, normal wear and tear excepted, as determined by existing County policy. Licensee shall not install any furniture, movable trade fixtures or equipment in or on the Licensed Area.

1.3 At its own additional expense, Licensee shall provide, and ensure compliance with, its own policies and procedures during Licensee's use of the Licensed Area as reasonably necessary to ensure the safety and integrity of the persons and

property brought onto the Licensed Area for the purposes authorized under this Agreement.

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

1.5 Licensee agrees to take all reasonable measures to minimize noise and any other type of interference with or disruption of normal business for the duration of the License Term, as defined below. Disregard of County staff requests to reduce the amount of noise or other disturbance caused by Licensee's activities may be grounds for revocation of the License.

2.0 TERM OF LICENSE

2.1 The License will commence upon the Effective Date of this Agreement and will continue in full force and effect until April 30, 2014 (the "License Term"). Licensee is granted permission to enter and use the Licensed Area as needed after regular Travis County business hours between the hours of 5:30 pm and 2:00 am on the weekdays and any time during the weekends (the "Hours of Operation"). Licensee acknowledges and agrees that such dates and times are subject to postponement and/or rescheduling due to any cause or reason beyond the control of the Licensee or as determined to be necessary by the County. Licensee agrees to provide written notice three days' prior to an event to County's Facilities Management Department Director at email roger.el-khoury@co.travis.tx.us or delivered to 1010 Lavaca, Suite 400, Austin, Texas, 78701. The notice must include information regarding the dates and times of the event.

3.0 PAYMENT TO COUNTY

3.1 In consideration of the License granted hereunder, Licensee shall pay to Travis County the amount of \$100.00 per event to cover County's administrative, utilities and related costs within three days of prior to the event without need of a County invoice.

3.2 Licensee shall pay County the sum set forth in this Section 3.1 and 3.3 to: Travis County, Facilities Management Department, P.O. Box 1748, Austin, Texas 78767.

3.3 With respect to any additional expenses incurred by County, County shall invoice Licensee for the actual costs so incurred, and Licensee shall remit payment to County for the invoice amounts within thirty days of receipt of invoice(s).

4.0 SMOKING

4.1 THERE SHALL BE NO SMOKING ON THE PROPERTY 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 will be solely responsible for the costs and the securing of any permits, licenses or other authorizations required by the City of Austin or other local governmental entities for use of the Licensed Area under this Agreement. All taxes, excise or license fees of every kind and character, on account of the Licensed Use or on account of the ownership of Licensee's property imposed by federal, state, county or city government shall be paid by Licensee.

5.2 Licensee will comply with federal, state, county and city regulations, laws and ordinances that in any manner affect Licensee's operations. Any violation of said statutes, rules, regulations or ordinances will constitute a material breach of this Agreement and shall entitle County to terminate this Agreement immediately upon delivery of written notice to the Licensee.

5.3 LICENSEE ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE LICENSED AREA PRIOR TO EXECUTION OF THIS AGREEMENT, LICENSEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE LICENSED AREA AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY COUNTY. LICENSEE AGREES TO ACCEPT THE LICENSED AREA "AS-IS" AND WITH ALL FAULTS AND WAIVES ALL OBJECTIONS OR CLAIMS IN THIS REGARD AGAINST COUNTY (INCLUDING BUT NOT LIMITED TO ANY RIGHT OR CLAIM OF CONTRIBUTION) ARISING FROM OR RELATED TO THE LICENSED AREA OR TO ANY HAZARDOUS MATERIALS IN THE LICENSED AREA. COUNTY WILL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE LICENSED AREA, OR THE OPERATION THEREOF FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. LICENSEE FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE USE OF THE LICENSED AREA AS PROVIDED FOR IN THIS AGREEMENT IS MADE ON AN "AS-IS" CONDITION AND BASIS WITH ALL FAULTS. IT IS UNDERSTOOD AND AGREED THAT THE CONSIDERATION FOR THE USE OF THE LICENSED AREA HAS BEEN NEGOTIATED TO REFLECT THAT ALL OF THE LICENSED AREA IS LICENSED BY COUNTY AND ACCEPTED BY LICENSEE IN THE "AS-IS" CONDITION. THIS ACCEPTANCE BY THE LICENSEE IS AN ACKNOWLEDGMENT THAT THERE IS NO LANDLORD/TENANT RELATIONSHIP ESTABLISHED BETWEEN COUNTY AND LICENSEE. LICENSEE HAS NO EXPECTATION OF WARRANTIES AS TO USE OR SUITABILITY OF THE PROPERTY.

6.0 USE AND REPAIRS

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

6.2 Licensee shall take good care of the Licensed Area during the License Term and keep it free from waste and nuisance of any kind. Licensee shall repair, replace, or reimburse County for any damage to the Property caused by Licensee, including any damage caused by the misuse or negligence of Licensee.

6.3 Upon termination of this License, Licensee shall deliver to County the Licensed Area together with all keys to the Licensed Area. Unless County otherwise agrees, any installed furniture, fixtures or equipment items must be removed by Licensee upon termination of this License in a good and workmanlike manner and Licensee agrees to repair any damage resulting therefrom and to leave the Licensed Area in as good a condition as it was in prior to removal of the installed item, reasonable wear and tear excepted. Any such equipment or fixtures not removed shall become the property of County.

7.0 CONTROL OF TRAVIS COUNTY; TERMINATION

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

7.2 Any disregard of the directions, restrictions, rules or regulations referenced in this Section 7 shall be grounds for County's immediate revocation of the License granted hereunder and termination of this Agreement.

7.3 In addition, County shall have the right to revoke the License and this Agreement shall automatically and immediately terminate if any of the following events occurs: (i) Licensee fails in any manner to adhere to the terms of this Agreement; (ii) Licensee breaches this Agreement and fails to remedy the breach within 30 days following receipt of County's written notice by certified mail to Licensee of the breach; (iii) County conveys or transfers the Property; (iv) the Travis County Commissioners Court determines that this License no longer serves the public interest or that it is no longer in the best interest of Travis County to continue this License; (v) a governmental law, ordinance, regulation, or court order requires termination; or (vi) County and Licensee mutually agree to such termination.

7.4 Upon termination of this Agreement, Licensee shall remove or cause to be removed all tangible personal property Licensee may have placed on the Licensed Area during the License Term.

8.0 INDEMNIFICATION

8.1 TO THE EXTENT PERMITTED BY LAW, 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 LICENSED AREA 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.

8.2 Licensee will not discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water, if that material (as is reasonably determined by County, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (i) health, welfare, or safety of persons, whether located on the Property or elsewhere, or (ii) the condition, use or enjoyment of the building or any other real or personal property. Licensee must immediately notify County of any release of any Hazardous Material on or near the Property whether or not such release is in a quantity that would otherwise be reportable to a public agency and must also comply with the notification requirements of any applicable state, local, or federal law or regulations.

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 minimum bodily injury and property damage limits of \$100,000 per occurrence and \$1,000,000 in the aggregate or a Combined Single Limit of \$500,000 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 B** 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.

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 entering or otherwise using the Licensed Area or 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 County 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 will not be construed as a waiver of that right or privilege.

13.2 All rights of County under this Agreement are specifically reserved and any act or omission will not impair or prejudice any remedy or right of County under it. Any right or remedy stated in this Agreement will not preclude the exercise of any other right or remedy under this Agreement, the law or at equity, nor will 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 will 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 must be in writing and 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 is:

Dan Ross
Allan-Thrasher, L.L.C.
1104 San Antonio Street
Austin, Texas 78701

15.3 County Address. Except for the notice regarding the dates and times of the event required in Section 2.1, the address of County for all other notices under this Agreement is:

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

And to:

Leslie Browder, Executive Manager (or successor)
Travis County Planning and Budget Office
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 will 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 will 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, representations, or agreements either oral or written.

County and Licensee have duly executed this Agreement effective as of the later date set forth below (the "Effective Date").

TRAVIS COUNTY, TEXAS:

LICENSEE:

ALLAN-THRASHER, L.L.C.
a Texas limited liability company

By: _____
Samuel T. Biscoe
Travis County Judge

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

Exhibit A

Licensed Area

ALLEY (20' R.O.W.)

2 STORY
BRICK
BUILDING

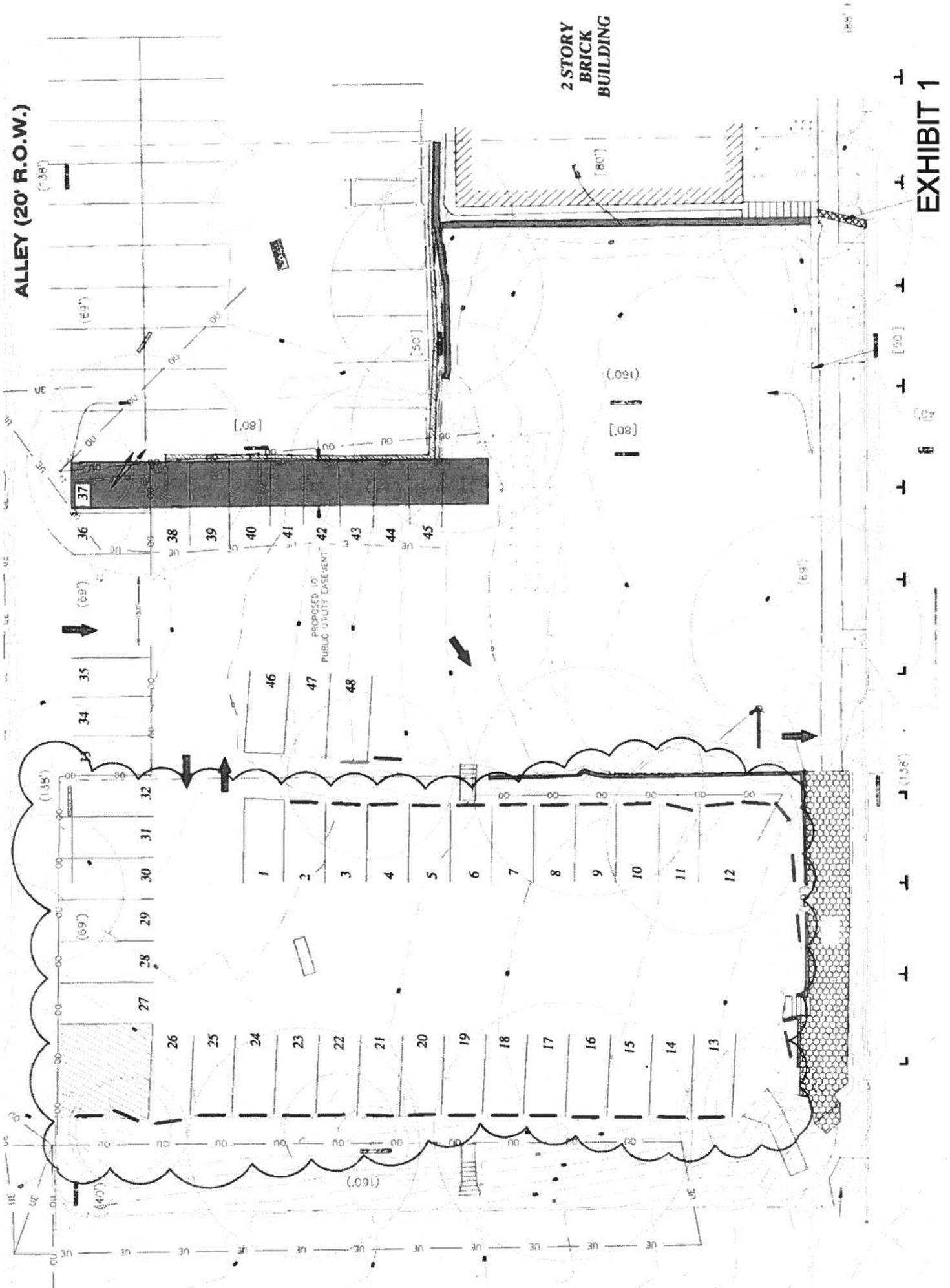


EXHIBIT 1

**Exhibit B
Insurance Certificate
(attached)**