



## Travis County Commissioners Court Agenda Request

**Meeting Date:** December 17, 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

*John Carr  
for Roger El Khoury*

### **AGENDA LANGUAGE:**

Consider and take appropriate action regarding the License Agreement for Temporary Construction Area located at 416 W. 11th Street between Travis County and Texas PTA.

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

The Facilities Management Department (FMD) received a request from Kyle Ward, Texas PTA, to obtain a license agreement for the use of County owned property as a temporary construction area. The proposed license agreement containing the terms is at Attachment One. Under the license agreement, Travis County would grant Texas PTA access to the area from date of approval until August 31, 2014.

### **STAFF RECOMMENDATIONS:**

Facilities Management Department recommends approval of the license agreement with Texas PTA for the temporary construction easement.

### **ISSUES AND OPPORTUNITIES:**

The temporary construction easement will terminate prior to the County starting construction of the new District Attorney Office Building.

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

To be determined.

### **ATTACHMENTS/EXHIBIT:**

License Agreement

### **REQUIRED AUTHORIZATIONS:**

Christopher Gilmore, County Attorney's Office



In consideration for LICENSOR'S granting of this license to LICENSEE, LICENSEE agrees to pay LICENSOR Ten and NO / 100 Dollars \$10.00) on or before execution of this License Agreement by LICENSOR. LICENSEE must provide access to Lot 2 in lieu of the LICENSOR'S access to 11<sup>th</sup> Street during this License Agreement.

#### 4.0 ADDITIONAL CONSIDERATION AND SPECIAL CONDITIONS

- 4.1 No tree within the PROPERTY may be removed or disturbed by LICENSEE or its contractors without prior written approval of the LICENSOR.
- 4.2 Vehicular access to and from the PROPERTY will be allowed and maintained at all times.
- 4.3 The PROPERTY will be restored by LICENSEE to substantially the same condition that existed prior to the construction activities.
- 4.4 Any existing fencing that is moved or disturbed within the PROPERTY will be restored, replaced, or rebuilt with a new fence, by LICENSEE, with said new fence to be of like kind or style, of the same or higher level of quality, and in the same location as existed prior to removal of existing fence.
- 4.5 Without in any way limiting the liability of LICENSEE or its obligations under this License Agreement, LICENSEE agrees to maintain during the term of this License Agreement Commercial General Liability Insurance with combined minimum bodily injury and property damage limits of \$600,000 per occurrence and \$1,000,000 in the aggregate, with LICENSOR named as an additional insured. LICENSEE has provided LICENSOR with a certificate from its carrier evidencing such insurance, which certificate is attached hereto as **Exhibit B** and made a part hereof.
- 4.6 LICENSEE shall be solely responsible for the costs and the securing of any permits required for use of the PROPERTY under this License Agreement.
- 4.7 LICENSEE shall not use the PROPERTY for any purpose other than that set forth herein.
- 4.8 LICENSEE shall not interfere with Travis County employee use of Lot 1 & 2, Block 133 of the Original City of Austin, Travis County, Texas or Allan-Thrasher, LLC use pursuant to the License Agreement with as shown in Exhibit C attached hereto and made a part hereof.
- 4.9 LICENSEE shall only take access to the PROPERTY by an entrance on West 11<sup>th</sup> Street.

4.10 LICENSOR may terminate this License Agreement at any time by providing written notice to LICENSEE.

4.11 LICENSOR will provide five (5) parking spaces next to the gate from the alley during the construction of a retaining wall ("Retaining Wall") shown on Exhibit A, but only until the construction of said Retaining Wall is complete.

#### 5.0. TERM OF LICENSE

Unless terminated sooner, the license granted herein for **AREA 1** shall terminate upon completion of the work within **AREA 1** of the Temporary Construction Area, but in no event later than August 31, 2014. Unless terminated sooner, the license granted herein for **AREA 2** of the Temporary Construction Area shall terminate upon completion of the work for the Retaining Wall. Upon LICENSOR'S request, LICENSEE must provide a construction schedule for the work relating to the use of the Temporary Construction Area.

#### 6.0 INDEMNIFICATION

LICENSEE AGREES TO AND SHALL INDEMNIFY, SAVE AND HOLD HARMLESS, AND DEFEND LICENSOR, ITS AGENTS, OFFICIALS AND EMPLOYEES FROM ANY AND ALL NEGLIGENCE, LIABILITY, LOSS, COSTS, CLAIMS, INCLUDING ATTORNEYS FEES, AND 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 OR IN CONNECTION WITH THIS LICENSE 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 LICENSOR.

#### 7.0 NON-ASSIGNMENT OF RIGHTS

LICENSEE may not assign this License Agreement or any portion or right thereof without the prior written consent of LICENSOR.

#### 8.0 AMENDMENTS

This License Agreement may be amended only by written instrument signed by both LICENSOR and LICENSEE. IT IS EXPRESSLY

ACKNOWLEDGED BY LICENSEE THAT NO OFFICER, AGENT, REPRESENTATIVE OR EMPLOYEE OF LICENSOR HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO MODIFY OR AMEND THE TERMS OF THIS LICENSE AGREEMENT UNLESS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY BY THE COMMISSIONERS COURT OF TRAVIS COUNTY.

#### 9.0 NON-WAIVER AND RESERVATION OF RIGHTS

- 9.1 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 License Agreement shall not be construed as a waiver of that right or privilege.
- 9.2 All rights of LICENSOR under this License 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 License Agreement shall not preclude the exercise of any other right or remedy under this License Agreement, at 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.

#### 10.0 VENUE AND CHOICE OF LAW

The obligations and undertakings of each of the parties to this License Agreement are performable in Travis County, Texas, and this License 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 License Agreement will lie in the appropriate court of Travis County, Texas.

#### 11.0 NOTICES

- 11.1 Any notice required or permitted to be given under this License 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.
- 11.2 The address of LICENSEE for all purposes under this License Agreement shall be:

Kyle Ward  
Texas PTA  
7600 Chevy Chase Drive Building Two, Suite 300  
Austin, Texas 78752

11.3 The address of LICENSOR for all purposes and all notices under this License Agreement shall be:

Roger El Khoury, Director (or successor in office)  
Travis County Facilities Management Department  
P.O. Box 1748  
Austin, Texas 78767

And

Christopher C. Gilmore  
Assistant County Attorney  
P.O. Box 1748  
Austin, Texas 78767  
Attn: File No. 163.1530

11.4 Each party may change the address for notice to it by giving notice of the change in compliance with this Section.

## 12.0 MEDIATION

When mediation is acceptable to both parties in resolving a dispute arising under this License 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 § 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.

## 13.0 SEVERABILITY

If any portion or portions of this License 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.



This instrument was acknowledged before me on \_\_\_\_\_, 201\_, by Samuel T. Biscoe, County Judge of Travis County, Texas, on behalf of said county.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

\_\_\_\_\_  
Name (typed or printed)  
My Commission expires: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, \_\_\_\_\_ of Texas PTA, on behalf of Texas PTA, a Texas nonprofit corporation.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas

\_\_\_\_\_  
Name (typed or printed)  
My Commission expires: \_\_\_\_\_

AFTER RECORDING:

Please send to:  
TEXAS PTA, Attn: Kyle Ward  
7600 Chevy Chase Drive Building Two, Suite 300  
Austin, Travis County, Texas 78752

