



## Travis County Commissioners Court Agenda Request

**Meeting Date:** March 11, 2014

**Prepared By:** Teresa Calkins, P.E., TNR Development Services **Phone #:** (512) 854-7569.

**Division Director/Manager:** Anna Bowlin, AICP, Division Manager, Development Services and Long Range Planning

**Department Head:** Steven M. Manilla, P.E., County Executive-TNR

**Sponsoring Court Member:** Commissioner Gomez, Precinct Four

**AGENDA LANGUAGE:** Consider and take appropriate action on a License Agreement with Apac, Texas, Inc, for a haul road across and conveyor under Buck Lane.

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

Apac Texas owns property on both sides of Buck Lane and holds permits from Travis County for the mining of sand and gravel from these properties (Travis County Basic Development Permit Nos. 05-2420, 06-3905 and 07-3847). Apac Texas has submitted a site development permit application to construct a concrete pavement crossing across Buck Lane that would allow for the transport of mined materials from the west side of Buck Lane to its permitted processing site on the east side of Buck Lane without using any public roads, except for the single crossing of Buck Lane. Apac's site plan also includes an 8'x8' concrete box culvert that would traverse the entire right of way below Buck Lane and that would accommodate a conveyor that can transfer mined materials across Buck Lane without utilizing the at-grade crossing. Apac's current permits allow for their use of Buck Lane to transport these materials, and Apac has previously posted \$87,000 fiscal surety for the maintenance of Buck Lane to address potential degradation of the roadway due to mining traffic. After the crossing has been constructed, Apac will seek approval from Commissioners Court at a future time for the release of fiscal related to the maintenance of Buck Lane.

The site plan also includes a temporary detour outside of the right of way located on Apac Texas property that will route detour traffic on a temporary roadway surface around the project area. The applicant has provided a temporary roadway easement for this detour in language acceptable to the Office of the Travis County Attorney.

**STAFF RECOMMENDATIONS:**

Staff finds that, with the license agreement, the site development permit application meets all County requirements. Due to the public benefit that, except for the single road crossing, the mining traffic will be removed from Buck Lane, staff recommends approval of the agreement.

**ISSUES AND OPPORTUNITIES:**

None

**FISCAL IMPACT AND SOURCE OF FUNDING:**

None

**ATTACHMENTS/EXHIBITS:**

- Location Map
- Project Site Plan
- License Agreement

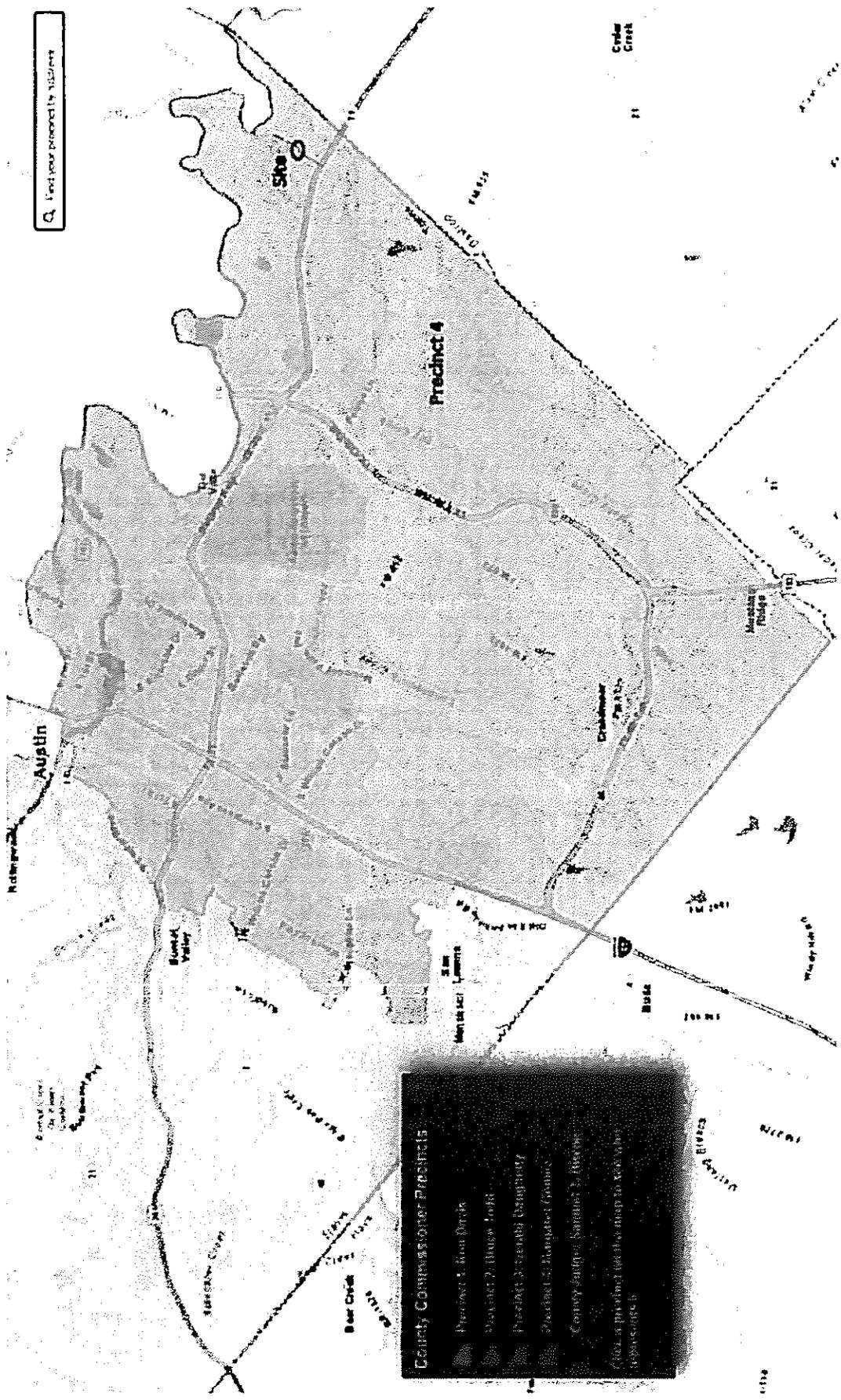
**REQUIRED AUTHORIZATIONS:**

Cynthia McDonald	Financial Manager	TNR	(512) 854-4239
Steven M. Manilla	County Executive	TNR	(512) 854-9429

**CC:**


: :  
0101 - Administrative -

Find your precinct by address



**Eddy County Commissioner Precincts**

- ▲ Precinct 1: Ann Dirlak
- ▲ Precinct 2: Bruce Leff
- ▲ Precinct 3: Terrell Campbell
- ▲ Precinct 4: Margaret Gorman
- ▲ Precinct 5: Samuel J. Herring

Map is provided for the map as well as other resources.





CONTRACTOR TO FIELD VERIFY LOCATIONS AND UTILITIES VERTICALLY AND HORIZONTALLY PRIOR TO CONSTRUCTION.

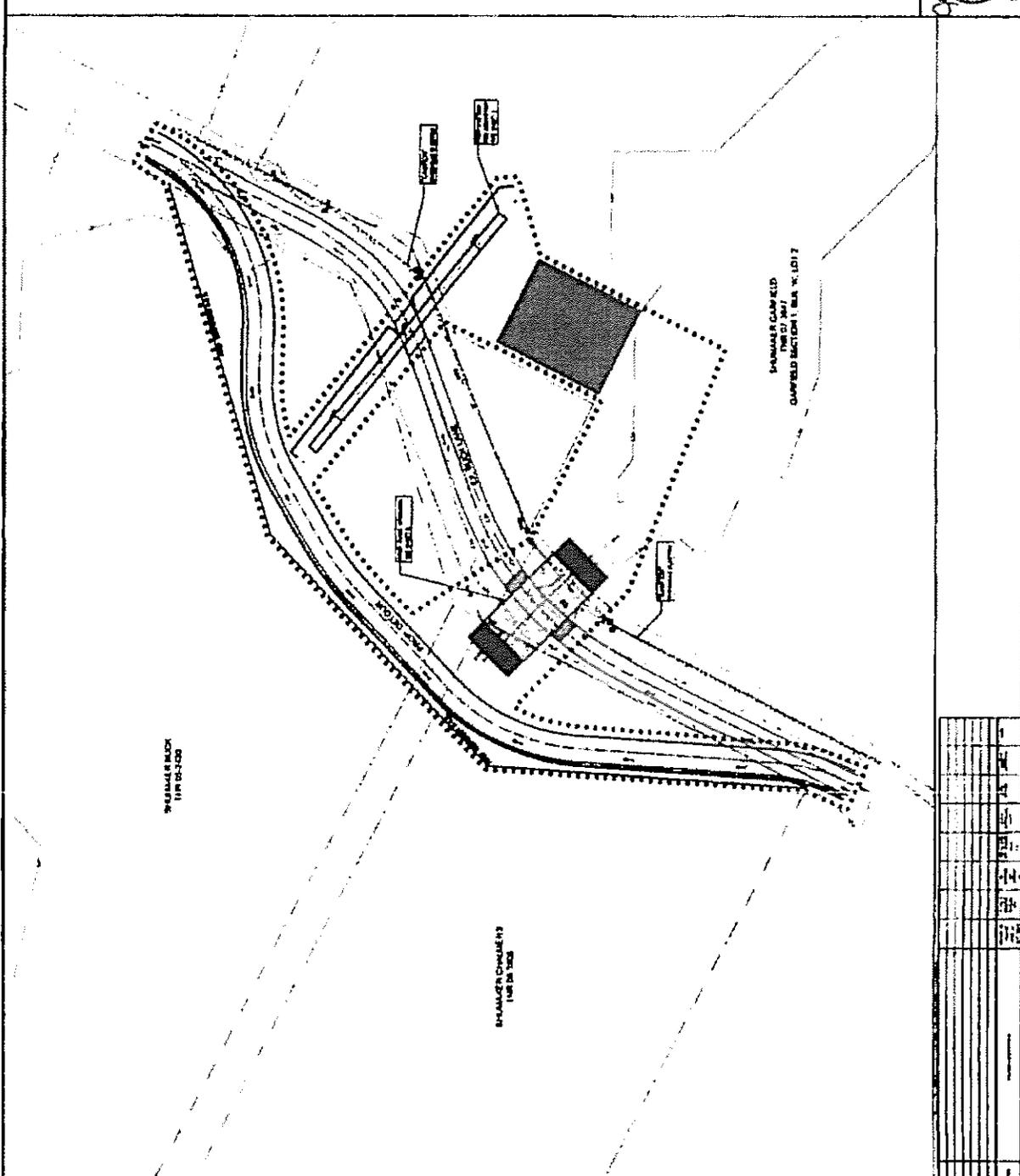
**NOTE:** CONTRACTOR TO FIELD VERIFY LOCATIONS AND UTILITIES VERTICALLY AND HORIZONTALLY PRIOR TO CONSTRUCTION.

**APAC TEXAS, INC.**  
 REGISTERED PROFESSIONAL ENGINEER  
 ENGINEERING LICENSE NO. 10181

PROJECT: [REDACTED]  
 SHEET NO. [REDACTED] OF [REDACTED]  
 DATE: [REDACTED]

SCALE: AS SHOWN  
 DRAWN BY: [REDACTED]  
 CHECKED BY: [REDACTED]

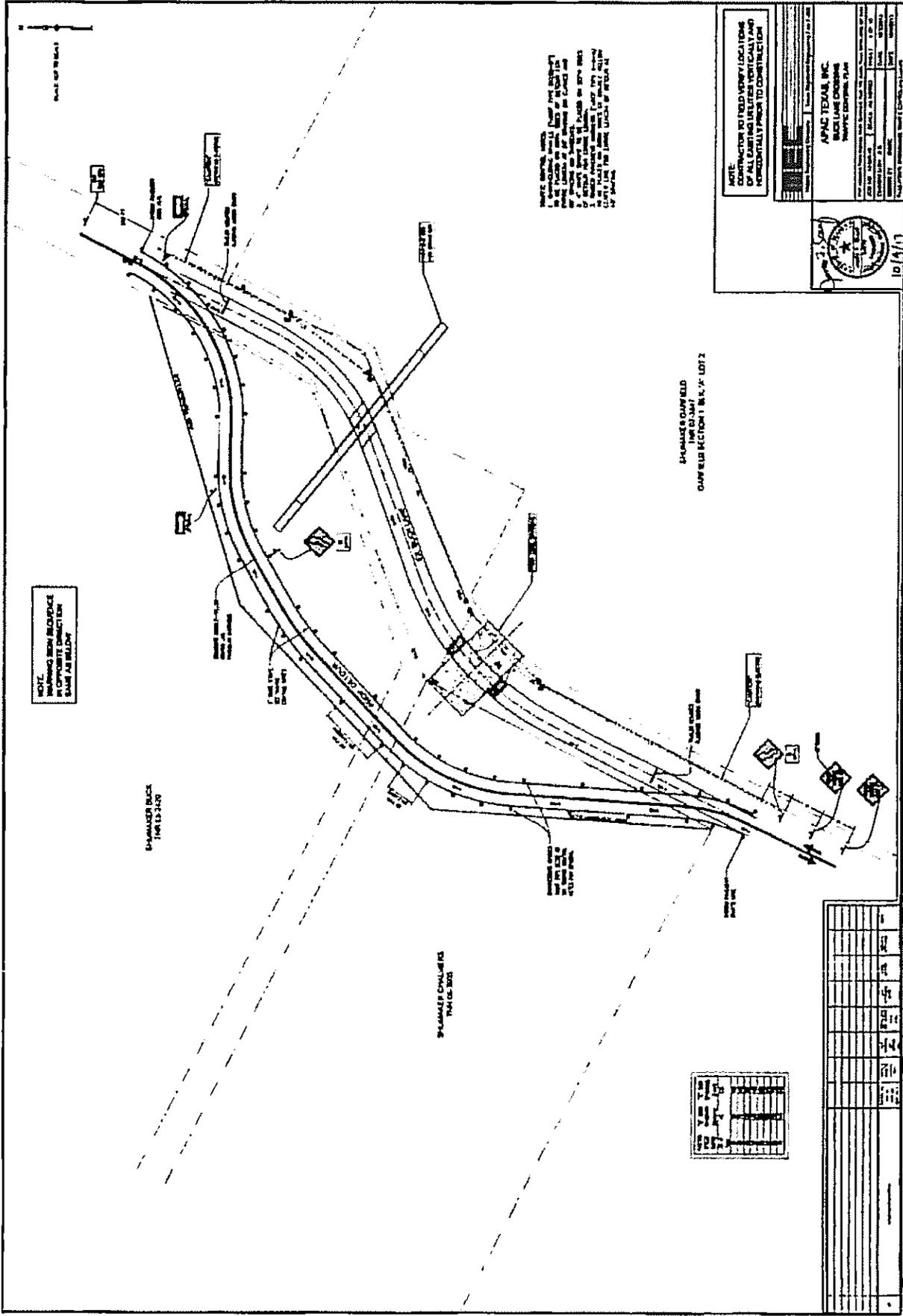
10/1/17



NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR PERMIT	10/1/17	[REDACTED]
2	REVISION		
3	REVISION		
4	REVISION		
5	REVISION		
6	REVISION		
7	REVISION		
8	REVISION		
9	REVISION		
10	REVISION		







NOTE:  
 SHAWNEE HIGH BLDG  
 SHAWNEE HIGH BLDG  
 SHAWNEE HIGH BLDG

SHAWNEE BLK  
 198-13-2420

SHAWNEE CHLNGRS  
 198-13-2420

SHAWNEE'S OLV BLD  
 198-13-2420  
 OLV BLD SECTION 1 1/4" X 1/4" LOT 2

NOTE:  
 CONTRACTOR TO FIELD VERIFY LOCATIONS  
 OF ALL EXISTING UTILITIES VERTICALLY AND  
 HORIZONTALLY PRIOR TO CONSTRUCTION

APAC TEXAS, INC.  
 REGISTERED PROFESSIONAL ENGINEER  
 LICENSE NO. 12345  
 STATE OF TEXAS

10/14/17

NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR PERMIT	10/14/17	J. SMITH
2	REVISION		
3	REVISION		
4	REVISION		
5	REVISION		
6	REVISION		
7	REVISION		
8	REVISION		
9	REVISION		
10	REVISION		



**TABLE OF DIMENSIONS & REINFORCING STEEL QUANTITIES FOR ONE STRUCTURE END**

Dimension	Reinforcing Steel		Quantity (lb)
	Bar #	Bar Size	
1	1	1/2"	11.11
2	2	1/2"	11.11
3	3	1/2"	11.11
4	4	1/2"	11.11
5	5	1/2"	11.11
6	6	1/2"	11.11
7	7	1/2"	11.11
8	8	1/2"	11.11
9	9	1/2"	11.11
10	10	1/2"	11.11
11	11	1/2"	11.11
12	12	1/2"	11.11
13	13	1/2"	11.11
14	14	1/2"	11.11
15	15	1/2"	11.11
16	16	1/2"	11.11
17	17	1/2"	11.11
18	18	1/2"	11.11
19	19	1/2"	11.11
20	20	1/2"	11.11
21	21	1/2"	11.11
22	22	1/2"	11.11
23	23	1/2"	11.11
24	24	1/2"	11.11
25	25	1/2"	11.11
26	26	1/2"	11.11
27	27	1/2"	11.11
28	28	1/2"	11.11
29	29	1/2"	11.11
30	30	1/2"	11.11
31	31	1/2"	11.11
32	32	1/2"	11.11
33	33	1/2"	11.11
34	34	1/2"	11.11
35	35	1/2"	11.11
36	36	1/2"	11.11
37	37	1/2"	11.11
38	38	1/2"	11.11
39	39	1/2"	11.11
40	40	1/2"	11.11
41	41	1/2"	11.11
42	42	1/2"	11.11
43	43	1/2"	11.11
44	44	1/2"	11.11
45	45	1/2"	11.11
46	46	1/2"	11.11
47	47	1/2"	11.11
48	48	1/2"	11.11
49	49	1/2"	11.11
50	50	1/2"	11.11

**TABLE OF ESTIMATED CULVERT TOEWALL QUANTITIES**

Span	Slab	Qty	Weight
1	1	1	11.11
2	2	2	22.22
3	3	3	33.33
4	4	4	44.44
5	5	5	55.55
6	6	6	66.66
7	7	7	77.77
8	8	8	88.88
9	9	9	99.99
10	10	10	111.10
11	11	11	122.21
12	12	12	133.32
13	13	13	144.43
14	14	14	155.54
15	15	15	166.65
16	16	16	177.76
17	17	17	188.87
18	18	18	199.98
19	19	19	211.09
20	20	20	222.20
21	21	21	233.31
22	22	22	244.42
23	23	23	255.53
24	24	24	266.64
25	25	25	277.75
26	26	26	288.86
27	27	27	299.97
28	28	28	311.08
29	29	29	322.19
30	30	30	333.30
31	31	31	344.41
32	32	32	355.52
33	33	33	366.63
34	34	34	377.74
35	35	35	388.85
36	36	36	399.96
37	37	37	411.07
38	38	38	422.18
39	39	39	433.29
40	40	40	444.40
41	41	41	455.51
42	42	42	466.62
43	43	43	477.73
44	44	44	488.84
45	45	45	499.95
46	46	46	511.06
47	47	47	522.17
48	48	48	533.28
49	49	49	544.39
50	50	50	555.50

**TABLE OF WINGWALL REINFORCING QUANTITIES**

Span	Slab	Qty	Weight
1	1	1	11.11
2	2	2	22.22
3	3	3	33.33
4	4	4	44.44
5	5	5	55.55
6	6	6	66.66
7	7	7	77.77
8	8	8	88.88
9	9	9	99.99
10	10	10	111.10
11	11	11	122.21
12	12	12	133.32
13	13	13	144.43
14	14	14	155.54
15	15	15	166.65
16	16	16	177.76
17	17	17	188.87
18	18	18	199.98
19	19	19	211.09
20	20	20	222.20
21	21	21	233.31
22	22	22	244.42
23	23	23	255.53
24	24	24	266.64
25	25	25	277.75
26	26	26	288.86
27	27	27	299.97
28	28	28	311.08
29	29	29	322.19
30	30	30	333.30
31	31	31	344.41
32	32	32	355.52
33	33	33	366.63
34	34	34	377.74
35	35	35	388.85
36	36	36	399.96
37	37	37	411.07
38	38	38	422.18
39	39	39	433.29
40	40	40	444.40
41	41	41	455.51
42	42	42	466.62
43	43	43	477.73
44	44	44	488.84
45	45	45	499.95
46	46	46	511.06
47	47	47	522.17
48	48	48	533.28
49	49	49	544.39
50	50	50	555.50

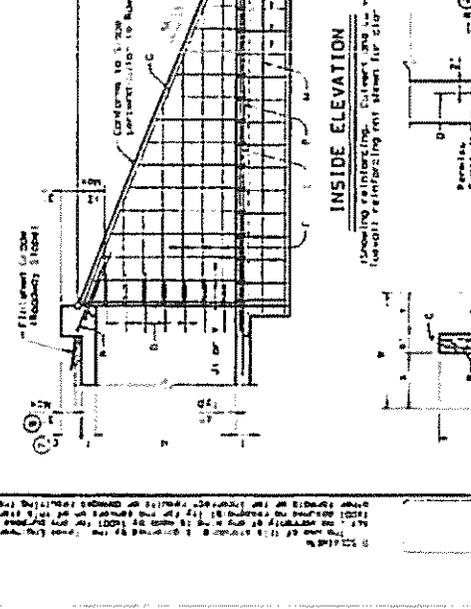
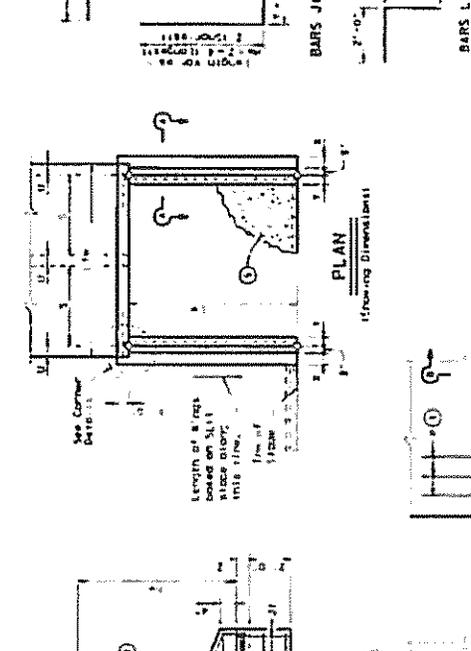
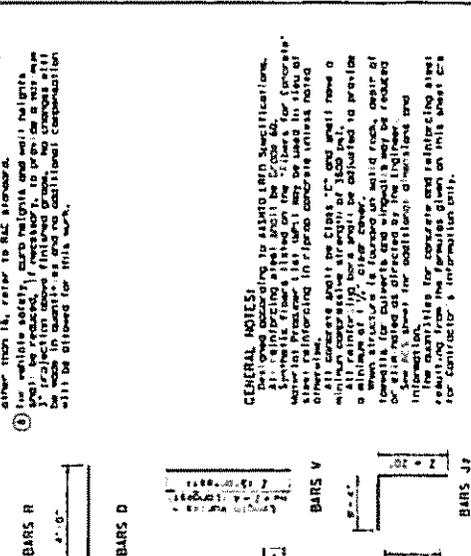
**WING DIMENSION CALCULATIONS:**

Concrete fill weight in Feet  
 $W = W_c \times L \times C = 0.250$   
 For (concrete culvert)  
 $L = 100$   
 $C = 1$   
 $W = 25.0$   
 For (soil culvert)  
 $L = 100$   
 $C = 1.5$   
 $W = 37.5$   
 Total wing area (top wing) =  $3.75 \times 100 = 375$  sq ft

Area of Wingwall  
 $A = L \times H = 100 \times 10 = 1000$  sq ft  
 $L =$  Length of wingwall  
 $H =$  Height of culvert slab

See applicable box culvert standard for H, S, L, and A values.

1. Spread bars 3'-0" minimum into bottom slab of box culvert.
2. Slabs to fit as necessary to maintain 1/2" clear space and 4" minimum between bars.
3. Quantities shown are based on an average wing height for the wing line structure and, to determine total weight of bars for the wing multiply the tabulated weight by 1.5.
4. Recommended values of sizes are: 211, 311, 411, & 511.
5. Reinforcement on the slabs, a 5" deep concrete pipe shall be constructed. Payment for pipe shall be made on a unit basis. Payment for reinforcement shall be made on a unit basis. Reinforcement shall be 1/2" diameter bars spaced at 12" on center. Reinforcement shall be placed in the slab in the direction of the pipe. Reinforcement shall be placed in the slab in the direction of the pipe. Reinforcement shall be placed in the slab in the direction of the pipe.
6. Reinforcement shall be placed in the slab in the direction of the pipe. Reinforcement shall be placed in the slab in the direction of the pipe. Reinforcement shall be placed in the slab in the direction of the pipe.
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Texas Department of Transportation  
 Bridge Division

**CONCRETE WINGWALLS WITH STRAIGHT WINGS FOR 0° SKEW BOX CULVERTS**

SW-0

10/9/93





**LICENSE AGREEMENT  
TO APAC TEXAS, INC FOR HAUL ROAD ACROSS AND CONVEYOR  
UNDER BUCK LANE**

THIS LICENSE AGREEMENT (this "Agreement") is made to be effective as of the \_\_\_ day of \_\_\_\_\_, 2014 by and between Travis County, a political subdivision of the State of Texas (the "County"), and APAC Texas, INC, ("Apac Texas"). The County and Apac Texas are referred to herein individually as "Party" and collectively as "Parties."

**RECITALS:**

WHEREAS, Buck Lane is a road accepted by the County for maintenance;

WHEREAS, Apac Texas is the owner of certain real property currently legally permitted for sand and gravel mining operations, more particularly described in the official files of the Travis County Transportation and Natural Resources Department under Travis County Basic Development Permit Nos. 05-2420, 06-3905 and 07-3847 (hereinafter referred to collectively as the "Permitted Tracts");

WHEREAS, Apac Texas desires to construct and maintain a rigid pavement crossing at Buck Lane that is capable of supporting off-road aggregate hauling vehicles, drainage improvements, and traffic control (together, the "Pavement Improvements") that will allow Apac Texas to transport mined materials to its processing plant without using any public roads, except for the single crossing of Buck Lane;

WHEREAS, Apac Texas also desires to also construct and maintain a box culvert crossing under Buck Lane for installation of a conveyor, drainage improvements related to the construction and maintenance of the conveyor crossing, and traffic control related to construction and maintenance of the conveyor crossing (together, the "Conveyor Crossing Improvements") that will allow Apac Texas to transport mined materials to its processing plant without using any public roads, except for the single crossing under Buck Lane;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, and the Parties' respective covenants and agreements established by this Agreement, the Parties agree as follows:

**I. Grant**

Subject to the conditions in this Agreement and to the extent of the right, title, and interest of the County in and to Buck Lane and to the right-of-way of Buck Lane adjoining the Permitted Tracts, the County grants to Apac Texas a license to construct, maintain, and repair the Pavement Improvements and the Conveyor

Crossing Improvements (together, the "Buck Lane Improvements") within the area of Buck Lane right-of-way ("the Licensed Property") described in Exhibit "A," which is attached hereto and incorporated herein for all purposes. Apac Texas will use the Licensed Property for the sole purpose of transporting mined sand, gravel, and other materials from mining operations within the Permitted Tracts.

**II. Consideration**

The County and Apac Texas each acknowledge the receipt and sufficiency of good and valuable consideration for the execution of this Agreement, including but not limited to the following:

- A. Apac Texas's agreement to forego use of public roads for the transportation of mined sand, gravel, and other materials from mining operations within the Permitted Tracts, except for a single crossing of Buck Lane.
- B. The agreement by the County to grant the foregoing license.

**III. County's Rights to Licensed Property**

- A. The license granted by this Agreement is expressly subject and subordinate to the present and future right of the County, its successors, assigns, lessees, grantees, and licensees, to construct, install, establish, maintain, use, operate, expand, improve, and renew any public utility facilities, franchised public facilities, drainage facility, roadways or streets on, beneath, or above the surface of the Licensed Property. The County shall take reasonable measures to prevent damage to any Buck Lane Improvements on the Licensed Property; however, any damage to or destruction of Apac Texas's property by the County in the exercise of the above-described rights shall be at no charge, cost, claim, or liability to the County, its agents, contractors, officers, or employees. Nothing in this Agreement shall be construed to limit in any way the power of the County to widen, alter, or improve the Licensed Property pursuant to official action by the governing body of the County or its successors. Except in cases of imminent threat to public health or safety, the County shall provide Apac Texas at least 30 days' prior written notice of any such act it intends to take in the exercise of above-described rights that will physically affect the Buck Lane Improvements.
- B. NOTWITHSTANDING ANY PROVISIONS IN THIS AGREEMENT TO THE CONTRARY, THE COUNTY RETAINS THE RIGHT TO ENTER UPON THE LICENSED PROPERTY, AT ANY TIME AND WITHOUT NOTICE TO APAC TEXAS, ASSUMING NO OBLIGATION TO APAC TEXAS, EITHER TO INSPECT THE IMPROVEMENTS, OR TO REMOVE ANY OF THE IMPROVEMENTS IF THE COUNTY DETERMINES THAT

REMOVAL IS NECESSARY FOR (1) PROTECTING PERSONS OR PROPERTY, (2) THE PUBLIC HEALTH OR SAFETY WITH RESPECT TO THE LICENSED PROPERTY, OR (3) IF THE COUNTY PROVIDES 30 DAYS' NOTICE, FOR EXERCISING THE COUNTY'S RIGHTS AND DUTIES WITH RESPECT TO THE LICENSED PROPERTY.

**IV. The Pavement Improvements**

Apac Texas agrees not to construct the Pavement Improvements until after the County has approved a basic development permit and a temporary roadway easement agreement for the construction of the Pavement Improvements.

**V. Indemnification**

**APAC TEXAS AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, NEGLIGENCE, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS' FEES, FOR INJURY TO OR DEATH OF ANY PERSON, FOR ANY ACT OR OMISSION BY LICENSEE, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR APAC TEXAS'S USE OF THE LICENSED PROPERTY.**

**VI. Insurance**

- A. Without in any way limiting the liability of Apac Texas or its obligations under this Agreement, Apac Texas agrees to maintain, during the term of this Agreement, Commercial General Liability Insurance written by a company acceptable to the County with 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 in the endorsement(s).
- B. Within 21 days after the effective date of this Agreement, Apac Texas shall deliver to the County Executive of the Travis County Transportation & Natural Resources Department (the "County Executive") a true copy of a certificate and endorsement from its insurance carrier evidencing Apac Texas's compliance with the insurance requirements set forth in this Agreement.
- C. Apac Texas acknowledges that Apac Texas's mining activities on the Permitted Tracts may span decades beyond the effective date of this Agreement and that the insurance limits set forth in Paragraph A above may not be sufficient to protect the County's interests. Within 60 days

after the County Executive notifies Apac Texas that the County Executive has determined that additional insurance coverage is necessary to protect the County's interests relating to this Agreement, which additional coverage the Parties agree must be commercially reasonable amounts, Apac Texas must provide the County a true copy of a certificate from its insurance carrier evidencing Apac Texas's compliance with the additional insurance requirements.

## VII. Conditions

- A. **Compliance with Regulations.** Apac Texas agrees that all construction, maintenance, repair, and use permitted by this Agreement shall be done in compliance with all applicable municipal, County, state, and federal policies, ordinances, laws, and regulations.
- B. **Apac Texas's Responsibilities.** Apac Texas is responsible for any damage to or relocation of facilities required by the construction and maintenance of the Buck Lane Improvements. Apac Texas agrees to reimburse the County for all reasonable costs incurred by the County in replacing or repairing any property of the County or of others which was damaged or destroyed as a result of activities under this Agreement by or on behalf of Apac Texas.
- C. **Maintenance.** Apac Texas shall maintain the Buck Lane Improvements and keep the Licensed Property free of dirt and aggregate material. If the County determines that any of the Buck Lane Improvements need to be replaced or repaired, the County will notify Apac Texas of such determination in writing and Apac Texas will have 30 days after its receipt of any such notification, to replace or repair the Buck Lane Improvements, at the sole cost and expense of Apac Texas. Apac Texas shall maintain the Buck Lane Improvements in a good and safe condition at Apac Texas's sole expense.
- D. **Removal or Modification.** Apac Texas agrees that removal or modification of any Buck Lane Improvements now existing or to be later replaced shall be at the County's sole reasonable discretion, except where otherwise provided by this Agreement, however if the County desires removal or modification of the Buck Lane Improvements it agrees to comply with the terms of this agreement, including Section X(4). This Agreement, until its expiration or revocation, shall run as a covenant on the land on the above-described real property, and the terms and conditions of this Agreement shall be binding on any successors and assigns in interest to Apac Texas or the County, and this Agreement shall be filed in the Official Public Records of Travis County, Texas.

- E. **Performance Bond.** At least 30 days before Apac Texas initiates construction of the Buck Lane Improvements, Apac Texas shall provide the County with cash, or a cashier's check, or a bond in a reasonable amount equivalent to the contract cost of constructing the Pavement Improvements and the Conveyor Crossing Improvements, respectively. Cash provided to the County will be deposited with the County Treasurer and interest on the amount will be paid to Apac Texas, on an annual basis upon the receipt by the Treasurer of a letter requesting such interest. The only condition to a draft on the cash security shall be a letter from the Travis County Judge indicating that Apac Texas has not fulfilled its obligations under this Agreement and that the County has incurred or will incur expenses with regard to the Buck Lane Improvements located on, upon, under, or in the Licensed Property. The performance bond will only be required for 2 years after the completion of the construction of the Pavement Improvements and the Conveyor Crossing Improvements, respectively.
- F. **Default.** In the event that Apac Texas fails to maintain the Buck Lane Improvements, then the County shall give Apac Texas written notice thereof by registered or certified mail, return receipt requested, to the addresses set forth below. Apac Texas shall have 30 days from the date of receipt of such notice to take action to remedy the failure complained of and, if Apac Texas does not satisfactorily remedy the same within the 30-day period, the County may, at the County's option, perform the work or contract for the completion of the work. In addition, Apac Texas agrees to pay, within 30 days of written demand by the County, all reasonable costs and expenses incurred by the County in completing the work.

#### VIII. Commencement; Termination by Abandonment

This Agreement shall begin on the date of full execution and continue thereafter for so long as the Licensed Property shall be used for the purposes set forth herein, unless terminated under other provisions of this Agreement. If Apac Texas abandons the use of all or any part of the Licensed Property by ceasing all mining activities within a three-mile radius of the Licensed Property for a period of more than three years, then this Agreement, as to such portion or portions abandoned, shall expire and terminate following 30 days' written notice by the County to Apac Texas, if such abandonment has not been remedied by Apac Texas within such period. The County shall thereafter have the same title to the Licensed Property so abandoned as though this Agreement had never been made and shall have the right to enter on the Licensed Property and terminate the rights of Apac Texas and Apac Texas's successors and assigns hereunder.

#### IX. Termination

- A. Termination by Apac Texas. Apac Texas may terminate this Agreement by delivering written notice of termination to the County not later than 30 days before the effective date of termination.
- B. Termination by County.
1. The County may revoke this Agreement at any time, if such revocation is reasonably required by the public interest, after providing at least 30 days prior written notice to Apac Texas for one of the reasons set forth below. Subject to prior written notification to Apac Texas or its successors in interest, this Agreement is revocable by the County if:
    - (a) The Buck Lane Improvements, or a portion of them, unreasonably interfere with the County's use of the Licensed Property;
    - (b) Use of the Licensed Property becomes necessary for a public purpose;
    - (c) The Buck Lane Improvements, or a portion of them, constitute a danger to the public, which the County deems not to be remediable by alteration or maintenance of such Buck Lane Improvements;
    - (d) Despite 30 days' written notice to Apac Texas and opportunity to cure, maintenance or alteration necessary to alleviate a danger to the public has not been made;
    - (e) Apac Texas fails to comply with the terms and conditions set forth in Travis County Basic Development Permit Nos. 05-2420, 06-3905, or 07-3847 after 30 days written notice and opportunity to cure;
    - (f) Apac Texas fails to comply with the terms and conditions of this Agreement after 30 days written notice and opportunity to cure; or
  3. If Apac Texas abandons or fails to maintain the Licensed Property, and the County receives no substantive response within 30 days following written notification to Apac Texas and opportunity to cure, then this Agreement shall terminate and the County may remove the Buck Lane Improvements, or a portion thereof, and collect from Apac Texas the County's actual expenses incurred in connection therewith.

4. If the County terminates this Agreement for any reason, including reasons set forth in other sections of this Agreement, it agrees to within 30 days of termination:

(a) provide Apac Texas with a new location for the crossing of Buck Lane that is acceptable to Apac Texas and the County, and

(b) enter into a mutually agreeable new agreement with Apac Texas containing substantially the same terms as this Agreement.

C. Notwithstanding any provision to the contrary, Apac Texas's license to use the Licensed Property automatically terminates without further action of either Party when Apac Texas has completed all mining activities on all portions of the Permitted Tracts.

D. If this Agreement is terminated for any reason, the County may, in its sole discretion, require Apac Texas to, at Apac Texas's sole expense and within 30 days or other time period set forth by the County in its written notice to Apac Texas, remove from the Licensed Property any Buck Lane Improvements made by Apac Texas and return the Licensed Property to as good a condition as it was on the effective date of this Agreement. Any Buck Lane Improvements not required by the County to be removed within said period are agreed to be the property of the County.

**X. Eminent Domain**

If eminent domain is exerted on the Licensed Property by paramount authority, then the County will, to the extent permitted by law, cooperate with Apac Texas to effect the relocation of Apac Texas affected installations at Apac Texas's sole expense. Apac Texas shall be entitled to retain all monies paid by the condemning authority for its installations taken, if any.

**XI. Interpretation**

In the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for nor against either party.

**XII. Application of Law**

This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this

Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the Parties as evidenced by this Agreement.

**XIII. Venue**

TO THE EXTENT ALLOWED BY TEXAS LAW, IT IS AGREED THAT VENUE FOR ALL LAWSUITS CONCERNING THIS AGREEMENT WILL BE IN TRAVIS COUNTY, TEXAS. THIS AGREEMENT CONCERNS REAL PROPERTY LOCATED IN TRAVIS COUNTY, TEXAS, AND IS WHOLLY PERFORMABLE IN TRAVIS COUNTY.

**XIV. Notice**

Any notice and/or statement, required or permitted hereunder, shall be deemed to be given and delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses or at such other addresses specified by written notice delivered in accordance herewith:

Apac Texas:

APAC Texas, Inc.  
Attn: Mr. Troy Carter  
1 Chisholm Trail, Suite 450  
Round Rock, Texas 78681

Copy to:

APAC Texas, Inc.  
Attn: Legal Department

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And to:

Murfee Engineering Co., Inc.  
1101 Capital of Texas Hwy. S., D-110  
Austin, Texas 78746

Travis County:

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

Copy to:

Mr. Steven M. Manilla, County Executive (or successor)  
Travis County Transportation and Natural Resources Dept.  
P.O. Box 1748  
Austin, Texas 78767

And to:

Honorable David Escamilla (or successor in office)  
Travis County Attorney  
P.O. Box 1748  
Austin, Texas 78767  
Attn: File No. 163.2560

**XV. Counterparts**

This Agreement may be executed in multiple counterparts which shall be construed together as a single original instrument as though all parties had signed one instrument, and, when executed, each counterpart shall be binding upon and inure to the benefit of each of the parties executing the instrument whether or not all other parties have executed same.

**XVI. Recordation**

The County shall record this Agreement and any amendments hereto in the Official Public Records of Travis County, Texas, and may re-record it at any time from time to time, and will provide Apac Texas with a copy of each recording.

**XVII. Amendment**

If Apac Texas conveys all or any part of its property located within the Permitted Tracts to others, any such subsequent owner and the County may amend this Agreement as it relates solely to such owner's tract(s) without the joinder of any other owner. In addition, Apac Texas and the County may amend this Agreement as it relates solely to Apac Texas's tract(s) without the joinder of any other subsequent owner. Any such amendment must be in writing, signed by such subsequent owner and the County and recorded in the Official Public Records of Travis County, Texas. Otherwise, any amendment of this Agreement requires an amendment in writing signed by the County and all owners of the property within the Permitted Tracts.

**XVIII. Recitals**

Any recitals in this agreement are represented by the Parties to be accurate, and constitute a part of the substantive agreement.

**XIX. Entire Agreement**

This Agreement and the exhibits attached hereto contain all the representations and the entire agreement between the Parties. Any prior correspondence, memoranda, or agreements are superseded in total by this Agreement. Any revision, modification, or amendment of this Agreement will be effective only when reduced to writing and signed by the County and Apac Texas. IT IS EXPRESSLY ACKNOWLEDGED BY APAC TEXAS THAT NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF TRAVIS COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE TRAVIS COUNTY COMMISSIONERS COURT.

**XX. Annexation by the City**

If the total area within the Licensed Property is annexed for full purposes by an incorporated municipality (the "CITY"), then the County may assign this Agreement to the CITY, and all references in this Agreement to "the County" shall be construed to mean "the CITY"; all references to "the County Executive of the County Transportation and Natural Resources Department" shall be construed to mean the equivalent officer of the CITY, and all references to "the Commissioners Court" shall be construed to mean "the CITY Council". Any other references to County employees shall be construed to mean the analogous CITY employee or officer.

**XXI. Mediation**

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 Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

Effective the later of the dates shown below.

**COUNTY:**

**Travis County, Texas**

By: \_\_\_\_\_  
Name: Samuel T. Biscoe  
Title: County Judge

**APAC Texas:**

**APAC Texas, INC.**

By:  
By: \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Samuel T. Biscoe, Travis County Judge.

\_\_\_\_\_  
Notary Public, State of Texas  
My commission expires:  
\_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of APAC Texas INC

\_\_\_\_\_  
Notary Public, State of Texas  
My commission expires:  
\_\_\_\_\_

After recording, return to:  
Travis County, Texas  
Attn: Mr. Mike Martino  
Travis County Transportation and Natural Resources Department  
P.O. Box 1748  
Austin, Texas 78767

