



## Travis County Commissioners Court Agenda Request

**Meeting Date:** September 9, 2014

**Prepared By/Phone Number:** John Carr, 854-4772

**Dept. Head:** Roger A. Elkhoury, M.S., P.E., Director, FMD, 854-4579

**County Executive:** Leroy Nellis, Acting County Executive, PBO, 854-9106

**Sponsoring Court Members:** County Judge Samuel T. Biscoe

### AGENDA LANGUAGE:

Consider and take appropriate action on shoeshine operations at the Blackwell-Thurmon Criminal Justice Center.

### BACKGROUND/SUMMARY OF REQUEST:

On August 16, 2011, the Commissioners Court approved a license agreement with Dwight Bellinger and Lora Gatewood which allowed them to provide shoeshine operations at the Blackwell-Thurmon Criminal Justice Center (CJC) lobby. This license agreement was for one year with two options for the County to extend for two more years. The license agreement was extended for both option periods, but the final option expired on August 15, 2014.

Under the current license agreement, the Licensee's paid the County \$300 per quarter for the opportunity to provide these services. Licensee was also required to provide proof of appropriate insurance coverage. Facilities Management Department (FMD) provided oversight for this license agreement during the past three year period. Performance of the Licensees has been acceptable; however, there were three instances where FMD issued Breach of Agreement notices to the Licensee. These instances included one time for failure to maintain appropriate insurance coverage and two times for failure to pay on time. All three breaches were successfully resolved and as of this date the Licensee is in full compliance with the terms of the license agreement.

During the term of the current license, FMD has been approached by another individual that indicated he would like an opportunity to provide the shoeshine operations for the County at the CJC. FMD advised this individual that the current license agreement would expire in August 2014, at

which time FMD would post an item to the Commissioners Court for consideration on how to proceed. The options to proceed are:

1. Eliminate the shoeshine operation at the CJC, or
2. Solicit for proposals to provide the services at the CJC, or
3. Exempt from competition and enter into a replacement license agreement with the current providers.

**STAFF RECOMMENDATIONS:**

Facilities Management Department recommends the Commissioners Court provide direction to staff on how they wish to proceed with these services.

**ISSUES AND OPPORTUNITIES:**

The current license agreement as developed by the County Attorney's office is at Attachment One for reference. If the Commissioners Court decides to solicit for proposals, FMD will work with the Purchasing Office and the County Attorney Office to procure these services. If the Commissioners Court decides to exempt this revenue producing license agreement from competition, FMD will work with the County Attorney's office on a new license agreement to be returned to the Court for consideration and approval.

**FISCAL IMPACT AND SOURCE OF FUNDING**

Annual revenue of \$1,200 – Current Agreement

**ATTACHMENTS/EXHIBITS:**

Current License Agreement

**REQUIRED AUTHORIZATIONS:**

Christopher Gilmore, County Attorney's Office



## **FACILITIES MANAGEMENT DEPARTMENT**

**Roger A. El Khoury, M.S., P.E., Director**

1010 Lavaca St. Suite 400 • P.O. Box 1748, Austin, Texas 78767 • Phone: (512) 854-9661 • Fax: (512) 854-9226

August 11, 2011

Mr. Dwight Bellinger and Ms. Lora Gatewood  
5801 Sweeney Cr. #1  
Austin, Texas 78723

RE: License Agreement

Dear Mr. Bellinger and Ms. Gatewood:

Enclosed for your files is the fully executed original license agreement between Travis County and yourselves for the shoeshine operation at the Blackwell-Thurman Criminal Justice Center. The effective date of the agreement is August 16, 2011. Please remember that your first quarterly fee payment is due within 90 days of this effective day. We wish you well with this business enterprise and hope you prosper.

Thank you for your assistance in the development and approval of this new license agreement. If you have any questions, please contact me directly at 854-4772.

Sincerely,

A handwritten signature in cursive script that reads "John F. Carr".

John F. Carr  
Administrative Director

Attachment:

License Agreement for Shoeshine Service at CJC

Copy To: Tenley Aldredge, Assistant County Attorney (electronic cc)  
Tracy Leblanc, Auditor's Office (electronic cc)  
Kapp Schwebke, Auditor's Office (electronic cc)  
Amy Draper, CPA., Facilities Management (electronic cc)

**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 Dwight Bellinger and Lora Gatewood, individuals residing in Travis County, Texas (collectively, "Licensee").

WITNESSETH

County is the owner of the Blackwell-Thurman Criminal Justice Center ("CJC") located at 509 West 11<sup>th</sup> Street, Austin, Texas (the "Property"); and

Licensee desires to enter upon and exercise certain rights and privileges in the Property in conjunction with the operation of a shoeshine stand from which Licensee will provide shoeshine services for a fee; and

County has determined that Licensee's requested use will provide a convenience to the public and to County employees doing business in or in the vicinity of the Property, and County desires to grant the requested license subject to the terms and conditions and for the purpose set forth in this Agreement; and

Licensee fully understands both the historical significance and the security considerations of the Property and intends to fully cooperate and take whatever steps are necessary to minimize all impacts upon the Property during Licensee's use.

County and Licensee, in consideration of the mutual promises expressed and the compensation agreed to be paid in this Agreement, covenant and agree to and with each other as follows:

**1.0 GRANT OF LICENSE**

1.1 County grants a license to Licensee to enter upon and use a designated area (the "Licensed Area") within the Property lobby for the purpose of operating a portable shoeshine stand from which Licensee will provide shoeshine services (the "Licensed Use"). The location of the shoeshine stand will be approved, in writing, by the Director of the Travis County Facilities Management Department (the "Director") prior to commencement of the licensed operations.

1.2 The License includes the right to bring onto the Licensed Area and to utilize thereon personnel, personal property, materials and equipment necessary or incidental to the operation of shoeshine services during the term of the License.

1.3 Licensee agrees to make no structural changes to any portion of the Licensed Area. However, the License allows for superficial preparation to be made to the Licensed Area to facilitate Licensee's shoeshine operations. 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.

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

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

## 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 for one (1) year (the "License Term"). Licensee is granted permission to enter and use the Licensed Area between the hours of 8:00 a.m. and 5:00 p.m. (the "Hours of Operation").

2.2 County, at its sole option, may extend this Agreement for up to two (2) additional one-year periods (each an "Option to Extend"), during which all provisions will remain unchanged and in full force except for the termination date. To be effective, County must exercise an Option to Extend in writing at least thirty (30) days prior to the expiration of the immediately preceding one-year term.

## 3.0 PAYMENT TO COUNTY

3.1 In consideration of the License granted hereunder, and to cover County's administrative, utilities and related costs Licensee will pay to Travis County a license fee (the "License Fee") in the amount of ONE HUNDRED AND NO/100 (\$100.00) per month (or \$1,200 per year), payable quarterly in four annual installments of \$300.00. The first License Fee payment will be due and payable on or before three (3) months following the Effective Date of this Agreement; the second License Fee payment will be due and payable on or before six (6) months from the Effective Date, and subsequent annual

payments payable on a similar schedule, every three months. If County exercises one or more Options to Extend, the License Fee for such extension periods will be due and payable on the same payment schedule (every three months, four times per year).

3.2 With respect to any additional expenses incurred by County above the expenses set forth herein, County may invoice Licensee for the actual costs so incurred, and Licensee will remit payment to County for the invoice amounts within thirty (30) days of receipt of invoice(s).

#### 4.0 LICENSEE OBLIGATIONS WITH RESPECT TO OPERATIONS

4.1 Licensee will provide all personnel, equipment, materials, site preparation, insurance and all other items normally required to perform the Services.

4.2 Licensee will perform the shoeshine services in an efficient and orderly manner customary in similar operations, and endeavor to employ only persons who are suitable in appearance, manner, and character for the Licensed Use. All Licensee's relations with the public in the Licensed Area are subject to the review and approval of the Commissioners Court. The Director, or his designee, and the Travis County Sheriff, or his designee, will have the right to require Licensee to dismiss from the Licensed Area any employees of Licensee whose conduct or dress is improper, inappropriate or offensive; and such employees will not be employed again in the Licensed Area by Licensee without the written consent of the Commissioners Court.

4.3 Licensee will emphasize the cleanliness of the shoeshine operation and quality of the services offered. Licensee shall clear all rubbish, filth, and refuse from the Licensed Area and place that material in garbage containers of adequate size and design to prevent disruption of traffic flow and to promote an attractive, clean appearance.

4.4 Licensee will, at its own expense, display a list of prices for all services offered in a conspicuous place in the way normally practiced by the trade for the type and quality of the shoeshine services.

#### 5.0 SMOKING

5.1 NO SMOKING IS PERMITTED IN THE CJC AT ANY TIME. LICENSEE AGREES NOT TO USE ANY EQUIPMENT OR MATERIAL THAT IS INTENDED TO PRODUCE AN OPEN FLAME.

#### 6.0 PERMITS

6.1 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.

6.2 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 Commissioners Court.

6.3 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 PROPERTY HAS BEEN NEGOTIATED TO REFLECT THAT ALL OF THE PROPERTY 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.

#### 7.0 USE AND REPAIRS

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

#### 8.0 CONTROL OF TRAVIS COUNTY

8.1 Licensee must at all times obey the direction and commands of the Travis County Sheriff and the Director, or their designated representatives, while on or in the vicinity of the Licensed Area.

8.2 Any disregard of the directions, restrictions, rules or regulations referenced in this Section will be grounds for immediate revocation of the License granted hereunder.

## 9.0 INDEMNIFICATION

9.1 LICENSEE AGREES TO AND WILL 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.

9.2 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 regulation.

## 10.0 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.

## 11.0 TERMINATION

11.1 Termination for Default. Failure by either party to perform any provisions of this Agreement will constitute a breach of this Agreement. Either party may require corrective action within ten (10) business days after date of receipt of written notice citing the exact nature of the other's breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing such failure within the ten (10) business days will constitute a default. The defaulting party will be given a ten (10) business day period within which to show cause why this Agreement should not be terminated for default. The Commissioners Court may take whatever action as its interest may appear, resulting from such notice.

11.2 Termination for Convenience. County reserves the right to terminate this Agreement upon ten (10) days written notice for any reason deemed by the Commissioners Court to serve the public interest, or resulting from any governmental law, ordinance, regulation, or court order.

#### 12.0 NON-ASSIGNMENT OF RIGHTS

12.1 Licensee may not assign this Agreement or any portion or right thereof without the prior written consent of County.

#### 13.0 AMENDMENTS

13.1 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.

#### 14.0 SAFETY

14.1 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.

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

15.1 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.

15.2 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.

#### **16.0 SUPERVISION AND INSPECTION**

16.1 County may maintain a continuing evaluation of Licensee's operations to ensure that Licensee is complying with all provisions of this Agreement. This evaluation may include the quality of the service rendered, the prices charged to the public, the nature and quality of the merchandise offered for sale to the public, the neatness of the area in which Licensee will conduct the shoeshine operations, and the non-discrimination practices of Licensee in relation to both employment and service to the public.

#### **17.0 RELATIONSHIP OF PARTIES**

17.1 It is expressly understood that this Agreement is solely intended to create the relationship of independent contractors between County and Licensee. County will exercise no supervision or control over the employees of Licensee, or others in the service of Licensee; and County will provide no special services other than those specifically mentioned herein. Nothing contained in this Agreement will be deemed or construed to create a partnership or joint venture between County and Licensee, or cause County to be liable in any way for the debts and obligations of Licensee.

#### **18.0 NO PREFERENTIAL RIGHT**

18.1 This Agreement does not prohibit or curtail operations conducted on the Property or in the Licensed Area by other concessionaires now authorized or to be authorized in the future by County to provide any other service.

#### **19.0 FORCE MAJEURE**

19.1 In the event that County, due to conditions beyond its control, such as damage caused by fire, flood, tornado, windstorm, vandalism, civil tumult, riots, or any other act over which County has no control, should find it impossible to make available the Licensed Area as provided in this Agreement, County may cancel this Agreement and will have no other liability to Licensee on account of such cancellation, including without limitation any recovery by Licensee for lost profits anticipated to be made hereunder.

#### **20.0 VENUE AND CHOICE OF LAW**

20.1 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.

## 21.0 NOTICES

21.1 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.

21.2 Licensee Address. The address of Licensee for all purposes under this Agreement is:

Ms. Lora Gatewood  
Mr. Dwight Bellinger  
5801 Sweeney Cr. #1  
Austin, Texas 78723  
(512) 709-0216

21.3 Licensor Address. The address of Licensor for all purposes and all notices under this Agreement is:

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

21.4 Change of Address. Each Party may change the address for notice to it by giving notice of the change in compliance with this Section.

## 22.0 MEDIATION

22.1 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.

23.0 SEVERABILITY

23.1 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.

24.0 SUCCESSORS BOUND

24.1 This Agreement will be binding upon and inure to the benefit of County and Licensee and their respective successors, executors, administrators and assigns. Neither County nor Licensee may assign, sublet or transfer its interest in or the obligations hereunder of this Agreement without the written consent of the other party.

25.0 ENTIRETY OF AGREEMENT

25.1 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, representatives, 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:

By: Samuel T. Biscoe  
Samuel T. Biscoe  
Travis County Judge

Date: 8-16-11

LICENSEE:

By: Dwight Bellinger  
Dwight Bellinger

Date: 8-8-11

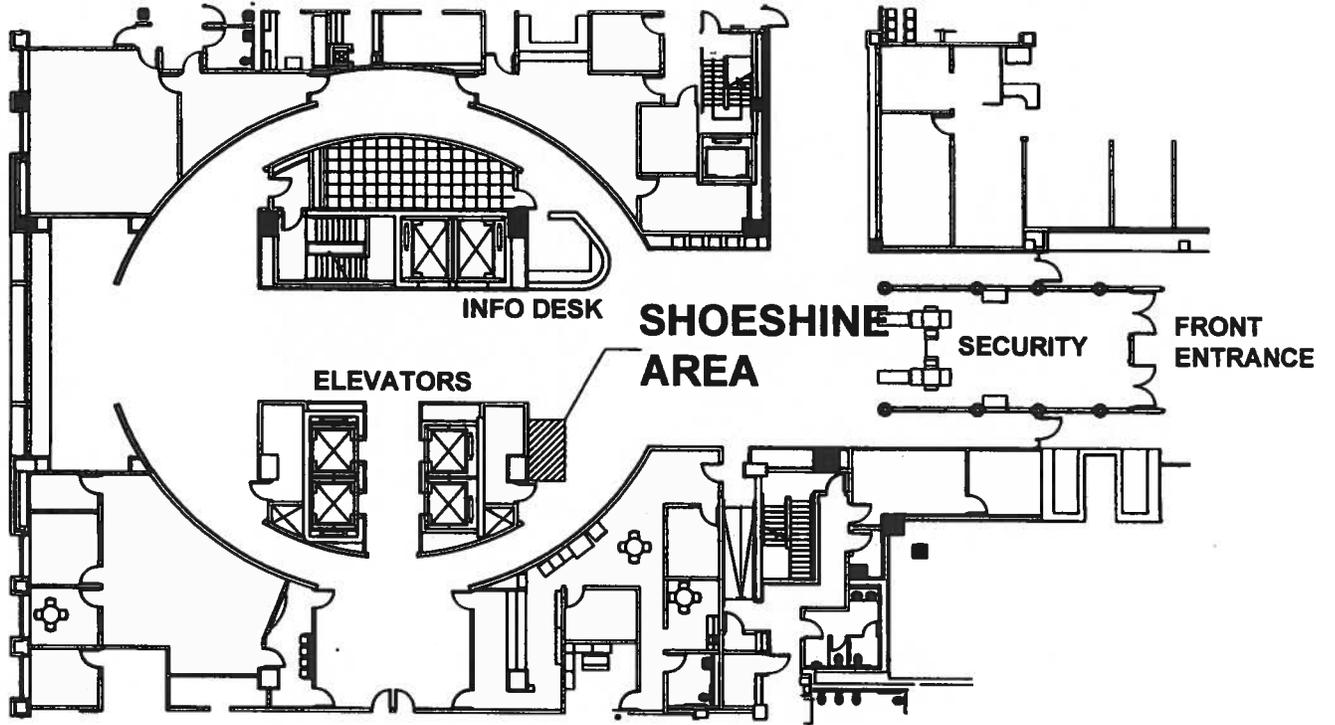
AND

By: Lora Gatewood  
Lora Gatewood

Date: 8-8-11

Exhibit A

**Licensed Area in CJC**



**FIRST FLOOR PLAN (PARTIAL)**

BLACKWELL-THURMAN CRIMINAL JUSTICE CENTER  
NOT TO SCALE



**EXHIBIT 'A'**

**Exhibit B  
Insurance Certificate  
(attached)**

**SPECTRUM POLICY DECLARATIONS (Continued)**

**POLICY NUMBER: 65 SBM TB3454**

<b>BUSINESS LIABILITY</b>	<b>LIMITS OF INSURANCE</b>
<b>LIABILITY AND MEDICAL EXPENSES</b>	<b>\$1,000,000</b>
<b>MEDICAL EXPENSES - ANY ONE PERSON</b>	<b>\$ 10,000</b>
<b>PERSONAL AND ADVERTISING INJURY</b>	<b>\$1,000,000</b>
<b>DAMAGES TO PREMISES RENTED TO YOU ANY ONE PREMISES</b>	<b>\$1,000,000</b>
<b>AGGREGATE LIMITS</b>	
<b>PRODUCTS-COMPLETED OPERATIONS</b>	<b>\$2,000,000</b>
<b>GENERAL AGGREGATE</b>	<b>\$2,000,000</b>
<b>EMPLOYMENT PRACTICES LIABILITY</b>	
<b>COVERAGE: FORM SS 09 01</b>	
<b>EACH CLAIM LIMIT</b>	<b>\$ 10,000</b>
<b>DEDUCTIBLE - EACH CLAIM LIMIT</b>	
<b>NOT APPLICABLE</b>	
<b>AGGREGATE LIMIT</b>	<b>\$ 10,000</b>
<b>RETROACTIVE DATE: 08012011</b>	

This Employment Practices Liability Coverage contains claims made coverage. Except as may be otherwise provided herein, specified coverages of this insurance are limited generally to liability for injuries for which claims are first made against the insured while the insurance is in force. Please read and review the insurance carefully and discuss the coverage with your Hartford Agent or Broker.

The Limits of Insurance stated in this Declarations will be reduced, and may be completely exhausted, by the payment of "defense expense" and, in such event, The Company will not be obligated to pay any further "defense expense" or sums which the insured is or may become legally obligated to pay as "damages".

**BUSINESS LIABILITY OPTIONAL  
COVERAGES**

**CYBERFLEX COVERAGE  
FORM SS 40 26**

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