

RESOLUTION NO. 2-16

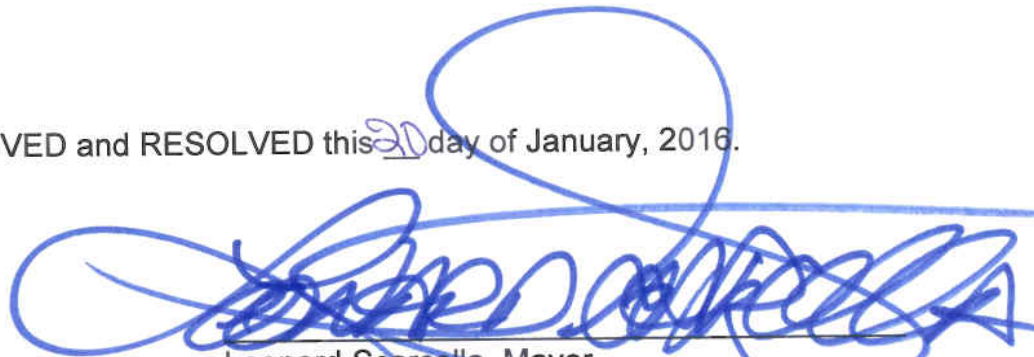
A RESOLUTION OF CITY COUNCIL OF THE CITY OF STAFFORD, TEXAS, APPROVING A REVOCABLE LICENSE AGREEMENT FOR RECREATIONAL PURPOSES WITH THE FORT BEND COUNTY DRAINAGE DISTRICT.

* * * * *

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STAFFORD, TEXAS:

Section 1. That the City Council hereby authorizes the Mayor to sign a revocable license agreement for recreational use purposes with the Fort Bend County Drainage District in accordance with the agreement attached hereto as Exhibit "A" and incorporated herein for all purposes as though it was set forth in its entirety in this resolution.

PASSED, APPROVED and RESOLVED this 20 day of January, 2016.



Leonard Scarcella, Mayor

ATTEST:



Bonnie Baiamonte, City Secretary

EXHIBIT A

THE STATE OF TEXAS

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§

THE COUNTY OF FORT BEND

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**REVOCABLE LICENSE AGREEMENT
FOR RECREATIONAL USE**

THIS LICENSE AGREEMENT is made and entered into by and between the Fort Bend County Drainage District, (the "District"), a body corporate and politic acting by and through its Board of Directors, under the laws of the State of Texas, and the City of Stafford, ("City"), a municipal corporation, principally situated in Fort Bend County, existing under the laws of the State of Texas, acting by and through its City Council.

WHEREAS, the City intends to construct a promenade trail for recreational purposes from Avenue E to East Promenade St. along Stafford Run; and

WHEREAS, the proposed Trail would be located entirely or substantially on the District's Easement, herein "Property"; and

WHEREAS, City has requested permission to use and make improvements to a certain portion of the District's Easement that overlaps the location of the proposed Trail for the purposes described above; and

WHEREAS, it is the District's desire to protect its Property, the drainage channel, and facilities within said Property; and

WHEREAS District and City affirmatively find that undertaking this Agreement serves a public purpose and will benefit the residents of the District and the City; and

WHEREAS City affirmatively finds that City is specifically authorized by law to individually and independently construct the Trail on its own; and

WHEREAS neither District nor City intends for any third party to obtain any rights by virtue of this Agreement; and

WHEREAS, District finds that this Revocable License Agreement serves a public purpose (hereinafter "Agreement")

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Article I. Description of License

1.1 Subject to the terms and conditions of this Agreement, District hereby grants to City a revocable, nonexclusive license to use (and permit its patrons, invitees, permittees, and licensees to use) for recreational purposes and to enter upon that certain tract of land as generally described in the attached Exhibit "A" (herein "the Property"), which exhibit is made a part hereof for all purposes for this Agreement, for the specific purpose to create, construct, install and maintain a multi-purpose recreational trail and related appurtenances as generally described in the attached Exhibit "B" (the "Trail"), which exhibit is made a part hereof for all purposes for this Agreement; and to bring and operate such equipment thereupon as may be necessary or appropriate to effectuate the purposes for constructing and maintaining the Trail.

1.2 Except as specifically granted in this Agreement, District owns and retains all right, title, and interest in the Property. This Agreement does not transfer any interest in the Property to the City or any third party, and any attempt to transfer the license will cause the license to automatically terminate. City will take necessary steps to protect District's rights in the Property.

1.3 District expressly reserves the right to the use and enjoyment of the Property for any and all other purposes including for flood protection and/or drainage purposes, and provided that District's rights to use the Property are superior to the rights granted to City hereunder ("District's Superior Rights"); and that District's Superior Rights shall prevail in the case of conflict. District may, with not less than 24-hours prior notice to the City, prohibit entry into and use of Property at any time, as determined by District. District shall not be liable to City or any third party for the Property's unavailability at any time.

1.4 This Agreement is further made subject to any restrictions, covenants, easements, rights-of-way, encumbrances, and mineral or royalty reservations or interests affecting the property on which the easement lies and appearing of record in the Official Records of Fort Bend County, Texas, to the extent that said items and matters are in effect and validly enforceable against the License granted herein as of the date hereof; provided, however, District, to the extent that it has the ability to enforce any of said items or matters, agrees that it shall not enforce any of said items or matters in a manner which would prejudice or interfere with this License, granted herein.

Article II. Trail Description

The City agrees that the Trail described by this Agreement, shall include the construction and installation of an eight foot wide bottom ash trail with a six inch concrete curb on each side, which totals nine feet in width and is approximately 2,100 feet in length, along the top of the Stafford Run drainage ditch. The Trail creates a loop around the Stafford Run drainage ditch located adjacent to the Estates at Promenade and Promenade at Stafford Run subdivisions. The Trail begins at Promenade Blvd and runs east to Avenue E, continues south along the west Avenue E right of way, turns west from Avenue E to the termination point at Promenade Blvd. The total Trail sections are as follows: 990 feet from Promenade Blvd to Avenue E, 150 feet along Avenue E, and 960 feet from Avenue E to Promenade Blvd.

Article III. Term

The term of this license will be from the date of execution by the last party hereto until December 31, 2045, unless earlier terminated pursuant to Section VII. Thereafter, this License Agreement may be renewed for an additional thirty (30) years or other term agreed upon in writing by both Parties. If the Trail ever ceases to be used for a public purpose, or the Trail is closed or permanently abandoned, then this License shall automatically terminate and be null and void and be of no further force and effect.

Article IV. License Fees

There will be no license fee associated with this Agreement. District shall not assess, and City shall not be liable for the payment of any fees to District for the City's use of the Property pursuant to this License Agreement.

Article V. District's Obligations

Upon execution of this Agreement, District will deliver the Property to City in a condition appropriate for use with the purpose described in this Agreement. Upon entering the Property, pursuant to this Agreement, City will acknowledge to District of receipt of the Property in said condition. Any complaint City has regarding condition of property must be brought to District within three (3) days of entry of Property by City or the complaint shall be deemed waived.

Article VI. City's Obligations

6.1 City affirms that it is specifically authorized by law to individually and independently construct the Trail at its sole cost and expense.

6.2 City affirms that, in performing the governmental functions contemplated in this Agreement, City will make that performance using current revenues legally available to City.

6.3 City acknowledges: (a) that the Trail is located upon District's easement, (b) that utilization of the Property, such as for construction of the Facilities and access by heavy machinery, may cause damage to or undermine the integrity of the area and District's facilities on the Property,

6.4 City's activities within the Property are performed at City's sole risk.

6.5 City agrees to assume all material costs associated with the Trail. District shall not be responsible for any material costs associated with the Trail.

6.6 City will, at its sole cost and expense, be responsible for the design of the Trail. City will furnish to the District Trail plans and specifications. District shall review plans for the Trail submitted by the City and approve such plans in a time reasonable and appropriate for the scope of the Trail. City will furnish to District the initial on-ground survey alignment, ditch cross sections and one (1) or more elevation benchmarks on the Trail Site prior to the commencement of work. Any purposed Trail must not restrict channel water flow, interfere with the backslope swale system, or

restrict any all District maintenance operations. Plans must indicate the trail location within the right-of-way, trail cross-section showing trail makeup, reinforcement, edging, etc. Plans must also indicate any appurtenances that will be placed within the right-of-way including signage, benches, landscaping, etc.

6.7 Trails must be designed to withstand the weight of the District's maintenance equipment.

6.8 City agrees that City will not undertake or commence any construction or installation of the Facilities within the Property until District and District's engineer have reviewed and approved the plans and specifications therefore and that City will coordinate all its activities within the Property with District and District's engineer.

6.9 At City's sole expense, City will furnish all labor, equipment and materials necessary to perform its responsibilities under this Agreement. City will provide all appropriate supervisory personnel necessary to coordinate the efforts of District and City personnel when required. City will direct and be solely responsible for the Trail. City will furnish all necessary materials to the site in a manner that will be sufficient to allow District personnel to work in a continuous, uninterrupted manner. City will notify District of its work schedule including labor and equipment deliveries.

6.10 All members of the public must be allowed to use the trail.

6.11 City will obtain at its sole expense any and all necessary and/or required permissions and/or permits, including NPDES, and provide all personnel necessary to implement the provisions of such permits.

6.12 City agrees, at its sole expense, to furnish any necessary flagmen, barricades, traffic devices and traffic control for the entire duration of the Trail.

6.13 City shall own, operate, and maintain the Trail at its sole cost and expense, in accordance with the requirements of all applicable laws, rules, and regulations.

6.14 The City agrees at its sole cost and expense to maintain the Trail in good and serviceable condition, including repairing or replacing any portions of the Trail and mowing the right-of-way from the top bank to the property line on the trail side of the channel. The City further agrees that it shall be responsible for all proper maintenance of the Trail in an efficient and workmanlike manner.

6.15 The City will have the duty of repair and replacement if the Trail becomes damaged through use, flooding or any and all District operations.

6.16 The City shall have the right, at its sole expense, to landscape and maintain the Trail for the purposes of enhancing and/or preserving the natural beauty and aesthetic quality of the Trail with prior written approval obtained from the District.

6.17 To prevent interference with the District's maintenance, repair, or improvement of its Facilities on the Property and to prevent risk of injury to the public, the City will be responsible for making all provisions at their sole expense for the closure of the Trail during the District's maintenance or construction operations on the Property. The District will notify the City as soon as reasonably able of expected maintenance, repair, or improvement of its Trail.

6.18 In the event the District decides to expand, redesign, or use its Property in any way and the Trail will interfere or impede such expansion or alteration, then the City will at its sole expense, after notification of the expansion or alteration by the District, promptly remove the relevant portion of the Promenade Trail or relocate such portion to a location mutually agreeable between the District and the City.

6.19 If the Trail shall ever be permanently closed or abandoned, before closure or abandonment, the City, at its sole expense, shall remove the Trail entirely and restore, as close to possible, the Property to its previous condition.

6.20 District will notify City within thirty (30) days of the completion of the Trail of any complaints that District may have regarding the Trail. Upon completion of the Trail, City will, at its sole expense, be responsible for the maintenance of the Trail.

6.21 City agrees to immediately discharge (either by payment or by filing of the necessary bond, or otherwise) any mechanics', materialmen's or other lien against the District which may arise out of payment due for, or purported to be due for, any labor, services, materials, supplies or equipment alleged to have been furnished to or for Trail in, upon, or about the Property.

Article VII. Termination

7.1 Termination for Convenience

7.1.1 District or City may terminate this Agreement at any time upon thirty (30) days written notice.

7.2 Termination for Default

7.2.1 District or City may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If City fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the District in writing;

7.2.1.2 If City materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to District's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from District specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that City was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the District in accordance with Section 7.1 above.

Article VIII. Modifications

Any modifications to this Agreement must be in writing and must be signed by both parties.

Article IX. Insurance

The City agrees to require any contractor who constructs any phase of the Trail to maintain insurance policies, with the minimum limits of insurance coverage, consistent with the District's general requirements for construction activities of comparable value to the particular phase of the Trail that may be under construction. All insurance policies carried by such contractors, except Worker's Compensation insurance, shall name the District as additional insureds (with respect to liability arising out of work performed by the contractors or subcontractors, as applicable) and shall contain a waiver of subrogation against the District.

The City shall obtain and maintain at its cost and expense comprehensive public liability insurance on the trail in the amount which will ensure the District against risk of loss due to claims for which it can be liable under the Texas Torts Claims Act.

Article X. Indemnity

TO THE EXTENT ALLOWED BY LAW, CITY SHALL SAVE HARMLESS DISTRICT FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEY FEES, ARISING FROM ACTIVITIES OF CITY, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CITY OR ANY OF CITY'S AGENTS, SERVANTS OR EMPLOYEES.

Article XI. Liability

11.1 The City acknowledges that the District and County are entitled to the immunities and defenses of the Texas Tort Claims Act.

11.2 The City hereby releases the District from any and all liability for damage or destruction caused to the Trail by the District within the District's right of way.

Article XII. Notice

12.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

12.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another designated by a party in a Notice pursuant to this section:

If to District: Fort Bend County Drainage District
ATTN: Chief Engineer, Mark Vogler, PE
P.O. Box 1028
Rosenberg, Texas 77471

With a Copy to: County Judge
401 Jackson Street, First Floor
Richmond, Texas 77469

If to City: City of Stafford
ATTN: Mayor Leonard Scarcella
2610 South Main Street
Stafford, TX 77477

12.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 12.1 and 12.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

12.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

12.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Article XIII. Compliance with Laws

City shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and other orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, City shall furnish District with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Article XIV. Assignment

Neither party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party.

Article XV. Applicable Law

This Agreement shall be construed under and in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

Article XVI. Successors and Assigns

District and City bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executor, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Article XVII. Conflict

In the event there is a conflict between this Agreement and the attached exhibits, this Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the ____ day of the _____, 2016.

FORT BEND COUNTY DRAINAGE DISTRICT

Robert Hebert, Fort Bend County Judge

Attest:

Date

Laura Richard, Fort Bend County Clerk

CITY OF STAFFORD:

Mayor

Attest:

Date

City Secretary

REVIEWED by:

Mark Volger, Chief Engineer
Fort Bend County Drainage District

Exhibit List:

Exhibit A –Map of Property

Exhibit B-Approved Plan and Specifications

EXHIBIT A



EXHIBIT B

