

ORDINANCE NO. _____

AN ORDINANCE APPROVING A TEMPORARY LICENSE AGREEMENT BETWEEN THE CITY OF DENTON AND JAGOE-PUBLIC COMPANY FOR TEMPORARY ACCESS AND USE OF A 2 ACRE TRACT OF LAND SITUATED IN THE 3800 BLOCK OF F.M. HIGHWAY 1830 (COUNTRY CLUB ROAD), AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Jagoe-Public Company has been awarded the Texas Dept. of Transportation Highway FM 1830 project CCSJ: 1785-01-032, constituting shoulder widening, base repair and culvert widening from US Highway 377, south 5.5 miles to FM Highway 407 (The "Project"); and

WHEREAS, Jagoe-Public Company has requested that the City of Denton permit temporary use of a 2 acre tract upon City of Denton owned lands for its construction operations related to the Project; and

WHEREAS, the City Council finds the transaction contemplated by the Agreement is in the best interest of the citizens of the City of Denton; NOW, THEREFORE;

THE COUNCIL OF THE CITY OF DENTON, TEXAS HEREBY ORDAINS:

SECTION 1. The recitals and findings contained in the preamble of this ordinance are expressly incorporated herein.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Temporary License Agreement, for and on behalf of the City of Denton, Texas, said Agreement being attached hereto and incorporated herein as Exhibit "A".

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

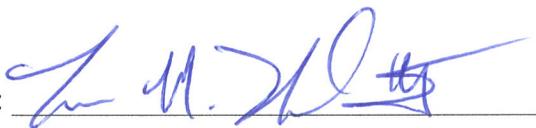
PASSED AND APPROVED this the _____ day of _____, 2017.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

BY:  _____

TEMPORARY LICENSE AGREEMENT

This Temporary License Agreement (the “Agreement”), is made this ____ day of _____, 2017, between the City of Denton, Texas, a Texas home rule municipal corporation (the “City”) and Jagoe-Public Company, a Texas corporation (“Jagoe”).

WHEREAS, the City owns certain real property located in the B.B.B & C.R.R. Co. Survey, Abstract Number 196, within the City of Denton, Texas, specifically along the 3800 block of F.M. Highway 1830, aka Country Club Road, (the “City Owned Lands”);

WHEREAS, Jagoe has been awarded the Texas Dept. of Transportation Highway F.M. 1830 project CCSJ: 1785-01-032, constituting shoulder widening, base repair and culvert widening from US Highway 377, south 5.5 miles to FM Highway 407 (the “Project”);

WHEREAS, it is the desire of Jagoe to occupy and use a two (2) acre portion of the City Owned Lands in connection with its construction activities related to the Project;

WHEREAS, the City is amenable to granting a temporary license over the lands shown as the “Licensed Premises”, depicted on Exhibit “A” attached hereto, to conduct certain activities, in accordance with the terms, provisions and conditions set forth herein.

ARTICLE I.

LICENSE

Section 1.01. License. In consideration of the mutual covenants and agreements of this Agreement, and for good and valuable consideration as set forth herein, the City hereby grants to Jagoe, upon the terms and conditions set forth in this Agreement, a temporary license on and over the Licensed Premises, for the sole purposes of (i) clearing, grading and leveling; (ii) placement of rock and/or gravel; (iii) ingress and egress of equipment and machinery; (iv) storage and staging of materials, equipment and machinery; (v) fencing; (vi) lighting; and (vii) placement of construction trailers, all in connection with activities related to the Project.

Section 1.02. Use. Any use of the Licensed Premises not expressly permitted by this Article I is expressly prohibited.

Section 1.03. Term. The effective date of this Agreement is July 1, 2017 (the “Effective Date”). This Agreement and the license granted herein shall expire upon the earlier to occur of (i) the completion of the Project; and (ii) one (1) year from the effective date of this Agreement. Notwithstanding the foregoing, the term of the Agreement may be extended an additional six (6) months, upon election by Jagoe as further defined herein. If Jagoe elects to extend the term of the Agreement for an aggregate period of eighteen (18) months, then the license granted herein shall expire upon the earlier to occur of (i) the completion of the Project; and (ii) eighteen (18) months from the effective date of this Agreement.

Section 1.04. Restoration. Prior to the expiration of this Agreement and the license granted herein, Jagoe shall (i) remove any property, material and/or equipment of Jagoe and/or any other third party, along with all trash and debris, from the Licensed Premises; and (ii) restore the Licensed Premises to the condition as existed at the Effective Date hereof.

ARTICLE II. COMPENSATION

Section 2.02. Compensation. As consideration for the rights granted by this Agreement, Jagoe shall pay to the City, on or before the Effective Date, the sum of Eight Thousand Dollars and No/100 (\$8,000.00). Upon election by Jagoe to extend the term of the Agreement for an aggregate period of eighteen (18) months, then Jagoe shall provide written notice to the City thirty (30) days prior to the expiration of the initial one (1) year term, along with additional payment of Four Thousand Dollars and No/100 (\$4,000.00). In any event, there shall be no refund of any compensation payment(s) made.

ARTICLE III.

INSURANCE & INDEMNITY

Section 3.01. Insurance. Jagoe shall procure and carry the insurance coverages, and upon the terms, as prescribed in Exhibit “B”, attached hereto and made a part hereof.

Section 3.02. Indemnity. Jagoe shall indemnify, defend, and hold harmless, to the fullest extent permitted by law, the City, and City’s respective officers, employees, elected officials and/or agents from and against any and all losses, damages, claims or liabilities, of any kind or nature, which arise directly or indirectly, or are related to, in any way, manner or form, the activities contemplated hereunder, occupation of the Licensed Premises by Jagoe or any party acting under the authority of Jagoe, or the omission of the activities contemplated hereunder. Jagoe further covenants and agrees to defend any suits or administrative proceedings brought against the City and/or the City’s respective officers, employees, elected officials and/or agents on account of any such claim, as directed by the City, and, without limiting the general indemnity provided herein, to pay or discharge the full amount or obligation of any such claim incurred by, accruing to, or imposed on the City, or the City’s respective officers, employees, elected officials and/or agents, as applicable, resulting from any such suits, claims, and/or administrative proceedings or any matters resulting from the settlement or resolution of said suits, claims, and/or administrative proceedings. In addition, Jagoe shall pay to the City, the City’s respective officers, employees, elected officials and/or agents, as applicable, reasonable and necessary attorneys’ fees incurred by such parties in enforcing Jagoe’s indemnity in this Section 3.02.

THE CITY, AND ITS RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS AND AGENTS, SHALL NOT BE LIABLE, AND JAGOE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY RELEASES THE CITY, AND ITS RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS AND AGENTS, FOR, FROM AND/OR AGAINST ANY AND ALL LOSSES, DAMAGES, CLAIMS OR LIABILITIES, ON ANY THEORY OF LEGAL LIABILITY, NOW EXISTING OR EXISTING IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO THE NEGLIGENCE, OF ANY KIND, TYPE OR DEGREE, OF THE CITY, RELATED TO THE ACTIVITIES CONTEMPLATED BY THIS AGREEMENT AND/OR THE OCCUPATION OF THE LICENSED PREMISES BY JAGOE,

ITS AGENTS, CONTRACTORS OR ANY PARTY ACTING UNDER THE AUTHORITY OF JAGOE.

The indemnity and release provided herein shall survive the termination or expiration of this Agreement.

ARTICLE IV.

EVENTS OF DEFAULT/REMEDIES

Section 4.01 (a). City Default/Jagoe Remedies. In the event the City shall default in the performance of any term or provision of this Agreement for any reason other than failure by Jagoe to perform hereunder, Jagoe may, if said default shall be continuing after ten (10) calendar days notice of such default to the City, as its sole and exclusive remedy, either (i) terminate this Agreement; or (ii) enforce specific performance of this Agreement.

(b) Jagoe Default/City Remedies. In the event Jagoe shall default in the performance of any term or provision of this Agreement for any reason other than failure by City to perform hereunder, City may, if said default shall be continuing after ten (10) calendar days notice of such default to Jagoe, exercise any right or remedy available to it by law, contract, equity or otherwise, including without limitation, specific performance and the right to terminate this Agreement. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently.

ARTICLE V.

MISCELLANEOUS

Section 5.01. No Waiver. No failure to exercise and no delay in the exercise on the part of either party hereto of any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other further exercise thereof or the exercise of any other right.

Section 5.02. Notice. Any notice required or permitted to be given hereunder shall be given in writing and delivered by hand delivery, telephonic facsimile, or mailed certified or registered

mail, to the party to whom such notice or communication is directed at the address of such party as follows:

Jagoe

Jagoe-Public Company
Attn: Bill Cheek
PO Box 250
Denton, Texas 76202-0250
Facsimile: (940)382-9732

City

Paul Williamson
Capital Projects – Real Estate
901-A Texas Street
Denton, Texas 76209
Facsimile: (940) 349-8951

Copies to:

Trey Lansford, Deputy City Attorney
City Attorney's Office
215 East McKinney Street
Denton, Texas 76201
Facsimile: (940) 382-7923

Any such notice or other communication shall be deemed to have been given and received, on the date it is personally delivered or delivered by telephonic facsimile, or if it is mailed as aforesaid, on the third day after it is mailed.

5.03. No Assignment. This Agreement, and the license granted herein, is personal to Jagoe and may not be assigned without the express written consent of the City. Any attempt to assign this Agreement, or the license granted herein, in whole or in part, without such consent shall terminate this Agreement and the license granted herein.

5.04. City. Unless otherwise provided herein or required by law and/or local ordinance or charter, any action required or permitted to be taken herein by the City, is hereby delegated to the City Manager of the City of Denton, or his designee.

5.05. Relationship of Parties. The relationship between the City and Jagoe for purposes of this Agreement is at all times solely that of licensor and licensee, and shall not be deemed in any event, a partnership, joint venture or joint enterprise.

5.06. Compliance with Applicable Laws. Jagoe shall comply with all applicable federal, state and local rules, regulations, statutes, laws, orders and ordinances pertaining to, in any way, manner or form, the activities described in or contemplated by this Agreement.

5.07. Applicable Law and Venue. This Agreement is to be construed under Texas law and applicable federal law, without regard to conflict of law rules that would direct the application of laws of any other jurisdiction, and all obligations of the parties created by this Agreement are performable in Denton County, Texas. VENUE FOR ANY ACTION BROUGHT PURSUANT TO THIS AGREEMENT, OR ANY ACTIVITY CONTEMPLATED HEREBY, SHALL LIE EXCLUSIVELY IN THE COURTS OF COMPETENT JURISDICTION OF DENTON COUNTY, TEXAS.

5.08. Partial Invalidity. Except as otherwise may be provided herein, if any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and this Agreement shall be construed as if it had not included the invalid, illegal or unenforceable provision.

5.09. Prior Agreements. This Agreement constitutes the parties' sole agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter hereof.

5.10. Amendment. No amendment, modification or alteration of this Agreement is binding, unless in writing, dated subsequent to the date of this Agreement, and duly authorized and executed by the parties. Notwithstanding the provisions of Section 5.04, above, the authority to amend this Agreement is not delegated by the City Council of the City of Denton to the City Manager.

5.11. Representations. Jagoe represents and warrants to the City (i) that it possesses the legal authority to enter into this Agreement and has taken all actions necessary to legally bind Jagoe to all terms hereof; (ii) that the party executing this Agreement on behalf of Jagoe possesses all

authority necessary to legally bind Jagoe to all terms hereof; and (iii) this Agreement is binding and enforceable upon Jagoe in accordance with the terms hereof.

5.12. License Agreement. The intent of this Agreement is to grant a license upon the terms and provisions hereof, solely during the times and solely for the purposes described herein. This Agreement shall not be construed in any way, manner or form as conveying or assigning to Jagoe any interest in real property, of any kind, nature or character, in or to the Licensed Premises.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2017.

CITY OF DENTON

TODD HILEMAN, CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

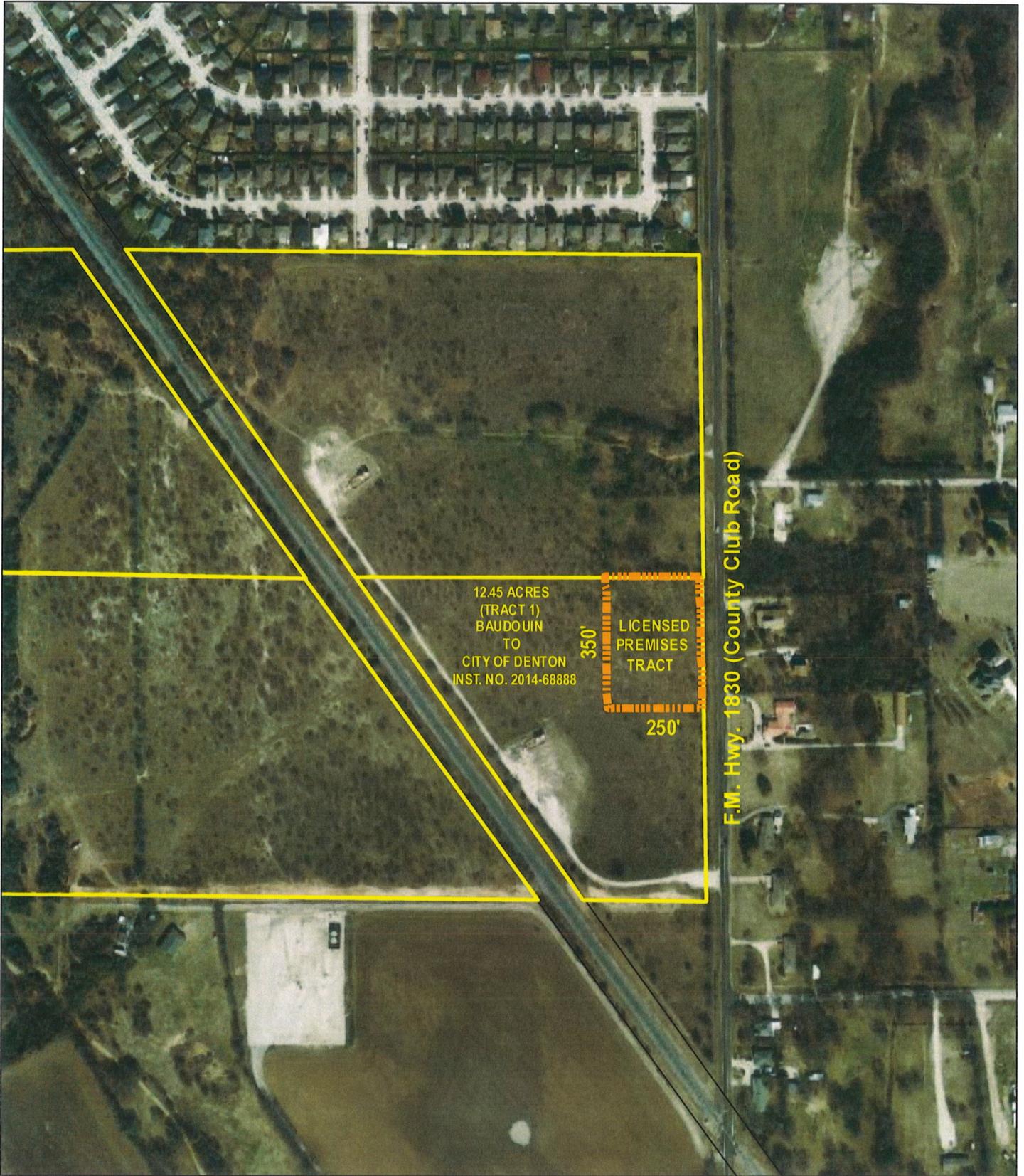
APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

BY: _____

JAGOE-PUBLIC COMPANY

BY: _____
NAME: Bill Cheek
TITLE: Executive Vice President

EXHIBIT A attachment to License Agreement



Licensed Premises Map - 2.0 acre tract

Exhibit "B"
To
Temporary License Agreement

Jagoie shall procure and carry, at its sole cost and expense during the term of this Agreement, insurance protection as hereinafter specified, in form and substance satisfactory to City, carried with an insurance company (or companies) authorized to transact business in the State of Texas, or through a program of self-insurance, covering all aspects and risks of loss of all operations in connection with this Agreement, including without limitation, the indemnity obligations set forth herein.

Jagoie shall obtain and maintain the following insurance coverages in full force and effect during the term of this Agreement, either through a program of self-insurance, or with carriers as follows:

Commercial General or Excess Liability (providing coverage for premises, operations, products, and completed operations, independent contractors, contractual liability, broad form property damage coverage, and where these exposures exist, explosion, collapse or underground (XCU) exposures):

Per Occurrence Limit:	\$1,000,000
Aggregate Limit:	\$2,000,000

Business Automobile Liability (providing coverage for owned, non-owned and hired automobiles):

Per Occurrence Limit	\$ 500,000
Aggregate Limit:	\$1,000,000

Statutory Workers' Compensation Insurance:

Workers' compensation insurance coverage in accordance with the statutory requirements of the State of Texas.

Environmental Liability

Per Occurrence Limit: \$1,000,000

Aggregate Limit: \$2,000,000

The City shall be listed as an Additional Insured with respect to the Commercial General Liability and Business Automobile Liability insurance policies, and shall be granted a waiver of subrogation under both policies, as well as the Workers' Compensation coverage. These requirements shall not apply should Jagoe choose to self-insure these risks. Jagoe will provide a Certificate of Insurance ("Certificate") on or before the Effective Date of this Agreement to the City as evidence of coverage. The Certificate will provide 30 days notice of cancellation. A copy of the additional insured endorsement and waiver of subrogation attached to the policy, as applicable, shall be included in the Certificate.

All insurance carriers must be admitted to do business in the State of Texas and have an AM Best's Rating of A-VII or better.