

**City Council
Agenda Memo**



**City Council
Meeting Date: 03/12/15**

TO: David A. Vela, Interim City Manager
FROM: Megan R. Santee, Director of Public Works
SUBJECT: Street Use License Agreement with Abilene Education Foundation for “Cajun Fest”

GENERAL INFORMATION

Abilene Education Foundation has submitted a Street Use License (SUL) application to hold a public event entitled “Cajun Fest” within the public right-of-way on Cypress Street. The applicant wishes to close Cypress Street from the north right-of-way line of North 2nd Street to the south right-of-way line of North 4th Street for this event, including closure of the intersection of North 3rd Street and Cypress Street, requiring closure of North 3rd Street from the east right-of-way line of Cedar Street to the west right-of-way line of Cypress Street. The event will take place in conjunction with April “Artwalk” on Thursday, April 9th, 2015, from 5:00 p.m. until 8:00 p.m.; however, the applicant wishes to close the street between the hours of 4:00 p.m. and 9:00 p.m. on this date. The applicant has obtained the approval of all affected property owners and/or business tenants for this event. The event will include food and entertainment to raise money for Abilene Education Foundation scholarships and AISD programs.

STAFF RECOMMENDATION

Staff has reviewed this request and recommends that City Council, by oral resolution, authorize the Mayor to execute the attached Street Use License Agreement with Abilene Education Foundation for “Cajun Fest.”

ATTACHMENTS

Street Use License Agreement, Short Term

Prepared by:

Name: Megan R. Santee

Title: Director, Public Works

Item No. 6.1

Disposition by City Council

Approved Ord/Res# _____

Denied

Other

City Secretary

THE STATE OF TEXAS

**STREET USE LICENSE AGREEMENT
SHORT TERM**

COUNTY OF TAYLOR

THIS STREET USE LICENSE AGREEMENT, hereinafter referred to as "License", executed this ____ day of _____, A.D., 2015, by and between the CITY OF ABILENE, a municipal corporation situated in Taylor and Jones Counties, Texas, hereinafter referred to as "City", and Abilene Education Foundation hereinafter referred to as "Licensee".

WITNESSETH:

That City, pursuant to Chapter 29, "Streets and Sidewalks", Article V, "Street Use License", does hereby grant to Licensee the privilege of using the following described public property, to-wit:

Closure of Cypress Street from the north right-of-way line of North 2nd Street to the south right-of-way line of North 4th Street, including closure of the intersection at North 3rd Street and Cypress Street, requiring closure of North 3rd Street from the east right-of-way line of Cedar Street to the west right-of-way line of Cypress Street

for and in consideration of THREE HUNDRED AND NO/100 (\$300.00) DOLLARS, commencing the date of execution unless otherwise specified, and upon the conditions and covenants set forth in this License and in Exhibit A, incorporated by reference for all purposes herein.

I. Purpose:

The purpose of this License is to permit Licensee to:

Hold an event entitled "Cajun Fest" in conjunction with April "Art Walk". The event will include food and entertainment to raise money for Abilene Education Foundation scholarships and AISD programs.

II. Term of Agreement/Termination:

1. This License shall be in effect only for the following time periods:

From 4:00 p.m. to 9:00 p.m. on April 9, 2015.

2. The City shall have the right to cancel this License at any time.

III. Indemnity:

A. Definitions

For the purpose of this section the following definitions apply:

“City” shall mean all officers, agents and employees of the City of Abilene.

“Claims” shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

“Licensee” includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

“Licensee’s employees” shall mean any employees, officers, agents, subcontractors, licensee and invitees of Licensee.

“Damages” shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

injury or damage to any property or right

injury, damage, or death to any person or entity

attorneys fees, witness fees, expert witness fees and expenses, and

all other costs and expenses of litigation

“Premise Defects” shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

“Proven” shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

“Sole negligence” shall mean negligence of a party that is unmixed with the fault of any other person or entity.

B. Indemnity

The Licensee agrees to indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Licensee's occupancy or use of the premises described above and/or activities conducted in connection with this License.

Licensee must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Licensee’s employees while in the vicinity where the work is being done. The City is not liable or responsible for the

negligence or intentional acts or omissions of the Licensee or Licensee's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects which may now exist or which may hereafter arise on the premises, whether or not caused in whole or in part by improvements constructed by the Licensee. Responsibility for all such defects is expressly assumed by the Licensee.

The City and Licensee must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Licensee or City. The City has the right to compromise and defend the same to the extent of its own interests.

BOTH CITY AND LICENSEE EXPRESSLY INTEND THIS LICENSE'S INDEMNITY PROVISION TO REQUIRE LICENSEE TO INDEMNIFY AND

PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS CONTRACT, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS CONTRACT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF THE CITY.

IV. Insurance.

Licensee agrees to secure and maintain the following types and amount of insurance, for the term of this license:

<u>Type</u>	<u>Amount</u>
Comprehensive General Liability to include (but not limited to) the following:	\$250,000 - Per Person \$500,000 - Per Occurrence for Bodily Injury, and \$500,000 - Per Occurrence for Property Damage
a) Premises/Operations Coverage	
b) Contractual Liability Coverage (insuring above indemnity provision)	

The preceding insurance requirements notwithstanding, the City reserves the right to revise the types and amounts of insurance required by this License prior to approval of the License or if the License is already in effect, to be effective thirty (30) days after notice is sent to the address provided herein.

All insurance policies or certificates shall contain the following provisions:

- a. That the City of Abilene, Texas, is named as an additional insured.

- b. That such insurance shall not be cancelled or materially changed without a minimum of thirty (30) day's advance notice in writing to the City.

All insurance policies shall be subject to the examination and approval of the Office of Risk Management, City of Abilene, Texas, for their adequacy as to form and content, form of protection, and insurance company. Licensee shall furnish to City Secretary for her License file certificates or copies of the policies, plainly and clearly evidencing such insurance at the time of application, and thereafter, new certificates prior to the expiration date of any prior certificate.

Licensee understands that it is its sole responsibility to provide this necessary information and that failure to timely comply with the requirements of this article shall be a cause for termination of this License.

V. License Requirements and Restrictions:

1. During the term of this License, Licensee shall maintain the premises licensed herein in a good and safe condition at all times. If the street surface, parkway, or facilities in the parkway, including landscaping, are damaged or disturbed by any activity associated with this License, the Licensee shall at its expense restore the same to as good a condition as before the activity, to the satisfaction of the Director of Public Works or designee.

2. All traffic control signing and barricading in the public right-of-way shall comply with the Texas Manual On Uniform Traffic Control Devices.

3. In the performance or permitting of work consistent with its normal course of duty within the right-of-way, the City shall not be liable for any damages to the Licensee's facilities or equipment or injury to Licensee, all such claim for damage or injury being expressly waived by Licensee.

4. Control of the public right-of-way within the area included in this License shall not supersede the rights already granted by other permits and authorizations to other parties unless specifically stated herein.

5. The City Manager, Police Chief, Fire Chief, or a designee of such officials, shall have the authority to order immediate removal of any objects or materials placed on the premises by Licensee if, in the City's opinion, removal is necessary to protect the health, safety, and welfare of the public.

CITY OF ABILENE, TEXAS

Mayor

ATTEST:

City Secretary

NAME OF LICENSEE:

Abilene Educational Foundation

By: *Jean McMillon*
Signature

Jean McMillon Executive Director
Printed Name and Title

APPROVED:



City Attorney

Business Address: 241 Pine Street

Abilene, TX 79601

**STREET USE LICENSE AGREEMENT
WITH ABILENE EDUCATION FOUNDATION
FOR USE OF CYPRESS STREET AND NORTH 3RD STREET
RIGHTS-OF-WAY**

CONDITIONS AND COVENANTS

EXHIBIT A

The Street Use License Agreement is subject to the following conditions and covenants:

1. The Licensee may take control of the permitted portion of the streets on Thursday, April 9, 2015, as follows:
 - a. **Control of the on-street parking spaces beginning at 4:00 p.m.**
 - b. **Control of the full width of the street beginning at 5:00 p.m.**

2. **The Licensee shall submit a traffic control plan in compliance with the Texas Manual on Uniform Traffic Control Devices to the Traffic & Transportation Administrator (676-6279) for review NO LATER THAN WEDNESDAY, APRIL 1, 2015. The plan shall be signed and dated by the one who prepares it. FAILURE TO COMPLY WITH THIS PROVISION MAY RESULT IN CANCELLATION OF THIS LICENSE.**

3. **The Licensee shall be responsible for obtaining, properly installing, and maintaining all necessary traffic control signs and barricades in compliance with the traffic control plan.**

4. The Licensee shall contact all property owners and/or business tenants of properties on the permitted portion of the street(s) to advise them of the proposed street closure and to work out arrangements to accommodate their access needs. The Licensee shall provide a list signed by all affected property owners and/or business tenants to the City Land Agent, signifying their approval/disapproval of the proposed street closure.

5. The Licensee shall designate an event command center and an event contact person(s). This information, as well as contact phone numbers, shall be provided to the Public Works Department by Wednesday, April 1, 2015. During the event, an event contact person shall be on-site at all times.

6. The Licensee shall contact the City Fire Marshal regarding a Fire Code outdoor carnival/fair permit, and obtain one if necessary. The Licensee shall contact the Traffic Control Division of the Abilene Police Department about a parade permit (if a parade is planned for the event), and obtain one if necessary. The Licensee shall insure that all food and beverage vendors associated with the event obtain a temporary food vendors permit from the City of Abilene Environmental Health office.

7. The Licensee shall insure that the event is conducted in conformance with all applicable laws and regulations, including City noise regulations and Texas Alcoholic Beverage Commission rules and regulations.
8. The Licensee shall prominently post notice at each entry into the controlled area that smoking is not permitted at the event and shall comply with the requirements of the City smoking ordinance.
9. The Licensee shall provide sufficient portable toilets to accommodate the needs of event attendees, invitees and participants, as determined by Licensee. The portable toilets shall not be located within 10 feet of the door to any building nor shall they be located on the street side of any glass storefront.
10. The Licensee shall contact the Abilene Police Department to inform them of the event and shall provide sufficient security forces, as determined by the Chief of Police, for crowd control and protection of property.
11. The Licensee shall provide for collection and disposal of solid waste created by the event. This shall include an adequate number of waste receptacles, collection of litter after the event, and delivery of the waste to the landfill. At a minimum this shall include one waste receptacle within 50 feet of each food vendor or beverage vendor and one waste receptacle within each block of the permitted/closed area that does not have a food or beverage vendor.
12. The Licensee shall maintain free of obstructions a fire apparatus access lane at least 25 feet in width from end-to-end of all street segments and an access path at least 10 feet in width from the fire apparatus access lane to all fire service appliances (fire hydrants, fire service connections to buildings, etc.) at all times.
13. The Licensee shall make provisions for safe access to private property abutting the permitted/closed area to any party desiring to access that property.
14. The Licensee shall protect traffic signal control equipment and related facilities, signs, pavement markings, and other traffic control devices within the permitted area and shall be responsible for prompt repair of any damage. The Licensee shall be responsible for all costs associated with adjustments to the City's traffic control devices that are necessary for the permitted activity. The Licensee shall not attach any item to the poles, equipment boxes or other components of the traffic signal system.
15. The Licensee shall clear the sidewalks and pavement area of obstructions to pedestrian and vehicular traffic before ending control of the area. The Licensee assumes all responsibility for warning and/or protecting pedestrians and motorists from obstructions and hazards if they are allowed to enter the controlled area before it is cleared of such obstructions and hazards.



CERTIFICATE OF COVERAGE

DATE (MM/DD/YY)
02.05.2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED AS SHOWN BELOW. THIS CERTIFICATE DOES NOT CONSTITUTE A CONTRACT BETWEEN PCAT, THE AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER (Contact With Any Questions) Kerry Sims/Carole Merz N A S P.O. Box 25928 Oklahoma City, OK 73125-0928 Phone: 800-880-0291 ext 2368 FAX: 800-788-8995	CARRIER AFFORDING COVERAGE CARRIER A: Property Casualty Alliance of Texas (PCAT) CARRIER B:
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COVERED MEMBER
 Abilene Independent School District
 P O Box 981
 Abilene TX 79604-0981

COVERAGES

THIS IS TO CERTIFY THAT THE COVERAGES LISTED BELOW HAVE BEEN ISSUED TO THE MEMBER NAMED ABOVE FOR THE COVERAGE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE COVERAGES DESCRIBED HEREIN ARE SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH COVERAGE DOCUMENTS. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CARRIER LTR	TYPE OF COVERAGE	ADDL INSR	MEMBER NUMBER	EFF DATE (MM/DD/YY)	EXP DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY					
	<input checked="" type="checkbox"/> General Liability	<input checked="" type="checkbox"/>	PC221-901	02.01.2015	02.01.2016	Each Occurrence \$ 3,000,000
	<input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occurrence					Fire Damage (Any one fire) \$ 500,000
	<input type="checkbox"/>					Med Exp (Any one person) \$ -0-
	<input type="checkbox"/>					Personal & Adv Injury \$ 3,000,000
	General Aggregate Limit Applies Per: <input checked="" type="checkbox"/> Policy <input type="checkbox"/> Project <input type="checkbox"/> Loc					General Aggregate \$ 3,000,000 Products - Comp/Op Agg \$ 3,000,000
	AUTOMOBILE LIABILITY					
	<input checked="" type="checkbox"/> Any Auto	<input type="checkbox"/>				Combined Single Limit (Each Accident) \$
	<input type="checkbox"/> All Owned Autos					Bodily Injury (Per Person) \$
	<input type="checkbox"/> Scheduled Autos					Bodily Injury (Per Accident) \$
	<input checked="" type="checkbox"/> Hired Autos					Property Damage (Per Accident) \$
<input checked="" type="checkbox"/> Non-Owned Auto						
<input type="checkbox"/>						
	OTHER					\$ \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES
 The City of Abilene is additional insured only as respects Abilene Independent School District fund raiser at the Center of Contemporary Arts, Art Walk on April 9, 2015.

CERTIFICATE HOLDER City of Abilene P O Box 60 Abilene, TX 79604	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED COVERAGES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED PCAT REPRESENTATIVE
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**ABILENE EDUCATION FOUNDATION
CAJUN FEST
APRIL 9, 2015
BENEFITTING SCHOLARSHIP
AND PROGRAMS OF AISD**

**NOTICE OF STREET CLOSURE
FROM 4:00 – 9:00 PM
DUE TO PERFORMANCES OF AISD STUDENTS**

<u>BUSINESS</u>	<u>NAME</u>	<u>DATE</u>
2-1-1 ACFT/United	Nancy Espinoza	2-09-15
Busch ^{brewery} Jesters	Carolyn Rodriguez	2-9-15
O'Kelley office	Auzunnebur	2-9-15
JW-FOCUS Digital	Y. Christian	2-9-15
Pramount	Sam McKinn	2-9-15
Prosperity	Carissa Gast	2-9-15
Wells Fargo	Pat Sartain	2/9/15
McBays Bakery	Kelly Perry	2/9/15
Quilting Reporter	Debra Jurek	2/9/15
Minute Friar	BBVA Compass	2/9/15
Buzzes Deli	Phyllis Puff	2/9/15
Monks Coffee Shop	Jase Sutton	2/9/15
HGN Operating	Wanda Dukes	2/9/15
HPN	Arlene Herrera	2/9/15
Proforma	Kirra Antibus	2-9-15
KBS	Jennifer Bell	2-9-15
TxStar	Jim Dromfohl	2-9-15