



Agenda Information Sheet

January 28, 2016

Agenda Item

Consider approval of a right-of-way encroachment agreement for property located at 307 S. Wellington Street. (Director of Planning & Development)

Background & Summary of Request:

The property at 307 S. Wellington, commonly known as Allred Veterinary Hospital, has requested a right-of-way encroachment agreement from the City for their property. After reviewing a recent survey of the property it was determined that a portion of their facilities extend over the property line and into the right-of-way of East Crockett Street. Those facilities include existing covered pens, 6' chain link fences, portion of a block building, and sidewalks on the south portions of lots 4 and 5 bordering and encroaching into the West Crockett Street right-of-way. By granting this agreement the property owner could continue to keep their improvements within the city right-of-way with the understanding that the city is not responsible for any damage to the improvements.

Attachments:

1. Draft Agreement
2. Survey

**RIGHT OF WAY
ENCROACHMENT AGREEMENT**
(COMMERCIAL)

THIS **AGREEMENT** is made and entered into by and between the City of Marshall, a municipal corporation of Harrison County, Texas, acting herein by and through its duly authorized City Manager, hereinafter referred to as the "City", and *Allred Veterinary Hospital*, acting herein by and through its duly authorized *John and Katie Allred* hereinafter referred to as "Licensee", Owner of the property located at *307 S. Wellington Street, Marshall, Texas 75670* ("Property").

AGREEMENT

1.

For and in consideration of the payment by Licensee of the fee set out below and the true and faithful performance of the mutual covenants herein contained, City hereby grants to Licensee permission to allow to remain and or maintain, Improvement(s) ("Improvement") that encroaches upon, uses and/or occupies portions of the space under, on and/or above the streets, alleys, sidewalks and other public rights-of- way, such Improvement(s) are described as follows:

Existing Covered Pens, 6' chain link fences, portion of a block building, and sidewalks on the south portions of lots 4 and 5 bordering and encroaching into the West Crockett Street right-of-way.

The location and description of said Improvement and the encroachment is more particularly described in Exhibit "A", attached hereto, incorporated herein and made a part hereof for all purposes.

2.

All construction, maintenance and operation in connection with such Improvement, use and occupancy shall be performed in strict compliance with this Agreement and the Charter, Ordinances and Codes of the City and in accordance with the directions of the City or authorized representative.

3.

Licensee, at no expense to the City, shall make proper provisions for the relocation and installation of any existing or future utilities affected by such encroachment use and occupancy, including the securing of approval and consent from the utility companies and the appropriate agencies of the State and its political subdivisions. In the event that any

installation, reinstallation, relocation or repair of any existing or future utility or improvements owned by, constructed by or on behalf of the public or at public expense is made more costly by virtue of the construction, maintenance or existence of such encroachment and use, Licensee shall pay to City an additional amount equal to such additional cost as determined by the City Manager, or duly authorized representative.

4.

City may enter and utilize the referenced areas at any time for the purpose of installing or maintaining improvements necessary for the health, safety and welfare of the public or for any other public purpose. In this regard, Licensee understands and agrees that City shall bear no responsibility or liability for damage or disruption of improvements installed by Licensee or its successors, but City will make reasonable efforts to minimize such damage.

5.

In order to defray all costs of inspection and supervision which City has incurred or will incur as a result of the construction, maintenance, inspection or management of the encroachments and uses provided for by this Agreement, Licensee agrees to pay to City at the time this Agreement is executed a one-time fee in the sum of Three Hundred and Twenty-Five Dollars (\$325.00).

6.

The term of this Agreement shall be for fifty (50) years, commencing on the date this Agreement is executed by the City of Marshall. Provided however, this Agreement shall terminate upon the non-compliance of any of the terms of this Agreement by the Licensee. City shall notify Licensee of the non-compliance and if not cured within thirty days this Agreement shall be deemed terminated.

7.

Upon termination of this Agreement, Licensee shall, at the option of City and at no expense to City, restore the public right-of-way and remove the Improvement encroaching into the public right-of-way, to a condition acceptable to the City Manager, or duly authorized representative, and in accordance with then existing City specifications. It is understood and agreed to by Licensee that if this Agreement terminates and Licensee fails to remove the Improvement, Owner hereby gives City permission to remove the Improvement and any supporting structures and assess a lien on the Property for the costs expended by the City to remove such Improvement.

8.

It is further understood and agreed upon between the parties hereto that the public rights-of-way, alleys, sidewalks ("public right-of-way") to be used and encroached upon as described herein, are held by City as trustee for the public; that City exercises such

powers over the public right-of way as have been delegated to it by the Constitution of the State of Texas or by the Legislature; and that City cannot contract away its duty and its legislative power to control the public right-of-way for the use and benefit of the public. It is accordingly agreed that if the governing body of City may at any time during the term hereof determine in its sole discretion to use or cause or permit the right of way to be used for any other public purpose, including but not being limited to underground, surface of overhead communication, drainage, sanitary sewerage, transmission of natural or electricity, or any other public purpose, whether presently contemplated or not, that this Agreement shall automatically terminate.

9.

Licensee agrees and acknowledges that this Agreement is solely for the purpose of permitting Licensee to construct, maintain and locate the Improvements over or within the described public right of way and is not a conveyance of any right, title or interest in or to the public right of way nor is it meant to convey any right to use or occupy property in which a third party may have an interest. Licensee agrees that it will obtain all necessary permission before occupying such property.

10.

Licensee agrees to comply fully with all applicable federal, state and local laws, statutes, ordinances, codes or regulations in connection with the construction, operation and maintenance of said Improvement, encroachment and uses.

11.

Licensee agrees to pay promptly when due all fees, taxes or rentals provided for by this Agreement or by any federal, state or local statute, law or regulation.

12.

Licensee covenants and agrees that it shall operate hereunder as an independent contractor as to all rights and privileges granted hereunder and not as an officer, agent, servant or employee of City and Licensee shall have exclusive control of and the exclusive right to control the details of its operations, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. The doctrine of respondent superior shall not apply as between City and Licensee, its officers, agents, servants, employees, contractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Licensee.

13.

Licensee covenants and agrees to indemnify, and does hereby indemnify, hold harmless and defend city, its officers, agents, servants and employees, from and against any and all

claims or suits for property damage or loss and/or personal injury, including death, to any and all persons, of whatsoever kind or character, whether real or asserted, arising out of or in connection with, directly or indirectly, the construction, maintenance, occupancy, use, existence or location of said improvement and encroachment and uses granted hereunder, whether or not caused, in whole or in part, by alleged negligence of officers, agents, servants, employees, contractors, subcontractors, licensees or invitees of the city; and licensee hereby assumes all liability and responsibility for such claims or suits. Licensee shall likewise assume all liability and responsibility and shall indemnify city for any and all injury or damage to city property arising out of or in connection with any and all acts or omissions of licensee, its officers, agents, servants, employees, contractors, subcontractors, licensees, invitees, or trespassers.

14.

While this Agreement is in effect, Licensee agrees to furnish City with a Certificate of Insurance, naming City as certificate holder, as proof that it has secured and paid for a policy of public liability insurance covering all public risks related to the proposed use and occupancy of public property as located and described in Exhibit "A". The amounts of such insurance shall be not less than **\$1,000,000 Commercial General Liability** with the understanding of and agreement by Licensee that such insurance amounts shall be revised upward at City's option and that Licensee shall so revise such amounts immediately following notice to Licensee of such requirement. Such insurance policy shall provide that it cannot be canceled or amended without at least ten (10) days prior written notice to the City Manager of the City of Marshall.

Licensee agrees, binds and obligates itself, its successors and assigns, to maintain and keep in force such public liability insurance at all times during the term of this Agreement and until the removal of all encroachments and the cleaning and restoration of the city streets. All insurance coverage required herein shall include coverage of all Licensees' contractors.

15.

Licensee agrees to deposit with the City when this Agreement is executed a sufficient sum of money to be used to pay necessary fees to record this Consent Agreement in its entirety in the deed records of Harrison County, Texas. After being recorded, the original shall be returned to the City Secretary of the City of Marshall, Texas.

16.

In any action brought by the City for the enforcement of the obligations of Licensee, City shall be entitled to recover interest and reasonable attorney's fees.

17.

Licensee covenants and agrees that it will not assign all or any of its rights, privileges or

duties under this contract without the prior written approval of the City Manager. Any attempted assignment without prior written approval will be void.

18.

THE PARTIES AGREE THAT THE DUTIES AND OBLIGATION CONTAINED IN PARAGRAPH 7 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

19.

This Agreement shall be binding upon the parties hereto, their successors and assigns.

EXECUTED this _____ day of _____, 20__.

City
City of Marshall

Licensee
Allred Veterinary Hospital

By: _____
Lisa Agnor, City Manager

By: _____
Name: _____
Title: _____

ATTEST:

City Secretary

STATE OF TEXAS §

COUNTY OF HARRISON §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **Lisa Agnor**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, as the act and deed of the **City of Marshall**, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 20__.

Notary Public in and for the State of Texas

STATE OF TEXAS §

COUNTY OF HARRISON §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared ***John and Katie Allred, owners***, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, as the act and deed of ***Allred Veterinary Hospital***, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of
_____, 20__.

Notary Public in and for the State of Texas

