

LICENSE AGREEMENT

This License Agreement is entered into by and between the City of San Marcos, Texas, a home rule municipal corporation, 630 East Hopkins Street, San Marcos, Texas 78666 ("Licensor") and Bird Dog San Marcos LLC., 1701 S. IH 35, San Marcos, Texas 78666 ("Licensee").

1. Grant of License. In consideration of \$10.00, other good and valuable consideration and the faithful performance of the covenants and conditions established in this License Agreement, Licensor hereby grants a License to Licensee across certain property owned by Licensor in the area of 1701 S. IH 35, San Marcos, Texas 78666 as described in the survey in Exhibit "A," attached hereto and made a part hereof (the "License Area") for the purposes of allowing the encroachment of a sign, as also shown in Exhibit "A," owned by Licensee (the "Improvements") into the License Area.

2. No Abandonment. Neither the granting of the License, nor any related permit, constitutes an abandonment by Licensor of the License Area or any other rights in and to the License Area. Licensee neither asserts nor claims any interest or right whatsoever, whether legal, equitable or otherwise in or to the License Area.

3. No Interference with Utilities. The License granted herein is subject to the requirement that the Improvements shall not interfere with any electric, water, sewer, or other utility, or equipment, except as specifically approved by the appropriate departments of Licensor in writing.

4. Right of Use of Property by Licensor and Public Utilities. The Licensor reserves the right at all times, for itself and all public utilities authorized to use and maintain the area immediately adjacent to the License Area for public right-of-way, utility and drainage purposes, to perform construction, maintenance and operation activities on, under or above the License Area, including those that involve excavation, trenching, pole and wire placement, or other activities that may affect the Improvements or access to the Improvements.

5. Indemnity and Release.

a. Licensee covenants and agrees to indemnify, and does hereby indemnify, hold harmless and defend Licensor, its officers, agents, contractors, and employees, from and against any and all claims, losses, causes of action or suits for property damage (including damage to improvements) or loss and/or personal injury, including death, including all costs, attorneys' fees, expert fees or other related costs and fees 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 the Improvements 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 Licensor; and Licensee hereby assumes all liability and responsibility for such claims or suits. Licensee shall likewise assume all liability and responsibility and shall indemnify Licensor for any and all injury or damage to Licensor 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.

b. Licensee hereby releases, relinquishes, and discharges Licensor, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether employees of either party or other third parties) and any loss of or damage to any property (whether property of Licensor, its employees, agents, contractors, lessees or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with Licensor's ownership, use or maintenance of the License Area and the performance of any maintenance, construction, reconstruction, repair, relocation, expansion, or removal of any of Licensor's facilities on, above or under the License Area. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance, and in the event of injury, death, property damage, or loss suffered by Licensee, any subcontractor, or any person or organization directly or indirectly employed by any of them. This release shall apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of Licensor.

6. Obligations of Licensee.

a. **Maintenance.** Licensee shall operate and maintain the Improvements and the License Area in a clean, safe and sanitary condition at all times in accordance with applicable laws and ordinances. If Licensee fails to maintain the Improvements and License Area in the manner provided herein such that the Im[provements are in violation of applicable City of San Marcos ordinances, e.g., unsafe structure presenting danger to passersby, Licensor, after written notice to Licensee and an opportunity to cure as provided in such notice, may undertake such maintenance activities and bill Licensee for the costs of such activities. If Licensee fails to pay such costs within 30 days after receipt of an invoice from Licensor, Licensor may file a lien against Licensee's property adjacent to the License Area in the amount of the invoice, plus interest accruing at the rate of 10 percent per annum until paid.

b. **Restoration.** Upon termination of this License Agreement, Licensee, at its own expense, shall remove such components of the Improvements that Licensor requests to be removed and restore the areas where such components are removed to such condition as existed prior to installation of the Improvements.

c. **Extra Costs to Licensor.** In the event that any installation, reinstallation, relocation or repair of any existing or future utility or improvements owned by Licensor, constructed by or on behalf of the public or at public expense is made more costly by virtue of the installation, maintenance or existence of the Improvements and Licensee's use of the License Area, Licensee shall pay to Licensor an additional amount equal to such additional cost as determined by Licensor's City Manager or designee.

7. Insurance. This License Agreement shall not be effective unless and until Licensee files with Licensor a certificate of liability insurance or other proof of insurance in a form acceptable to Licensor's risk manager confirming that the Licensee has procured a policy of commercial general liability insurance issued by an insurance company authorized to do business in the state of Texas. The policy shall provide in substance that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the city, its officers, agents or employees. The insurance shall provide coverage in an amount of not less than \$1,000,000.00 for each single occurrence. The policy of insurance shall name both Licensee and Licensor as insured parties to the full amount of the policy limits. If the policy is not kept in full force and effect throughout the term of this License Agreement, the License Agreement may be terminated by Licensor upon providing written notice of termination to Licensee.

8. Compliance with Laws and Regulations. Licensee agrees to comply with all laws and ordinances in the construction and maintenance of the Improvements.

9. Removal of Improvements by Licensor. Licensor retains the right, but not the obligation, to enter upon the License Area and, at Licensee's expense, to remove any structure, improvements or alterations that Licensor, in its determination, present a threat of injury to persons or damage to property. Except in the event of an emergency presenting an imminent threat to persons or property, Licensor will provide advance notice to Licensee of such determination.

10. Assignment; Binding on Successors. Licensee may assign this License Agreement to subsequent purchasers of Licensee's property adjacent to the License Area. This License, and the terms and conditions hereof, shall be binding upon subsequent owners or holders thereof. Licensee shall cause any immediate successors-in-interest to have factual notice of this License Agreement.

11. Expiration of License. This License shall expire automatically upon removal of the Improvements from the area within the License Area and, and shall expire as to any portion of the Improvements upon the removal, whether or not all of the proposed improvements are removed.

12. Revocation or Termination of License. Licensor may revoke or terminate this License upon the occurrence of any of the following conditions or events:

- a.** Licensee or its successors or assigns have failed to comply with the terms of this License;
- b.** The use of the License Area becomes necessary for a public purpose;
- c.** The Improvements or a portion of them constitute a danger to the public which is not remediable by maintenance or alteration of the Improvements;
- d.** The Improvements or any portion of them have expanded beyond the scope of the approved use; or

e. Maintenance or alteration necessary to alleviate danger to the public has not been made within a reasonable time after the dangerous condition has arisen.

13. Integration; Amendments; No Warranty of Title. This License constitutes the entire agreement between Licensor and Licensee on this subject, and it may be amended only by written instrument executed by both parties. **THE LICENSOR MAKES NO WARRANTY OF TITLE IN CONNECTION WITH THIS AGREEMENT. THE LICENSEE ACKNOWLEDGES AND UNDERSTANDS THAT THIS LICENSE DOES NOT CONSTITUTE AN INTEREST IN REAL PROPERTY, AND THE LICENSEE FULLY ACCEPTS THE RISKS ASSOCIATED WITH MAKING ANY IMPROVEMENTS TO THE LICENSE AREA WHILE HAVING ONLY A REVOCABLE RIGHT TO USE THE LICENSE AREA.**

14. Venue. Exclusive venue for any legal dispute under this agreement is in the state court in Hays County, Texas having jurisdiction over the dispute, or if in federal court, the United States District Court for the Western District of Texas, Austin Division.

15. The License may be filed of record in the Official Public Records of Hays County, Texas.

[SIGNATURES ON NEXT PAGE]

EXECUTED to be effective as of January 7, 2025.

LICENSEE:

LICENSOR:
CITY OF SAN MARCOS, TEXAS

By: _____
Michael De La Cruz
Bird Dog San marcos, LLC

By: _____
Stephanie Reyes, City Manager

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF HAYS)

This instrument was acknowledged before me on the _____ day of _____, 2025, by Stephanie Reyes, as City Manager of the City of San Marcos, a Texas Municipal Corporation, in such capacity, on behalf of said municipality.

Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF HAYS)

This instrument was acknowledged before me on the _____ day of _____, 2025, by Michael De La Cruz, as Owner of Bird Dog San Marcos, LLC, in such capacity, on behalf of said entity.

Notary Public, State of Texas

EXHIBIT A

Description of License Area and sign