

LICENSE AGREEMENT

STATE OF TEXAS           §  
                                  §  
CITY OF HAYS             §

This Agreement is made and entered into by and between the City of San Marcos, Texas, a municipal corporation and home-rule city of the State of Texas (the "CITY"), and Carma Paso Robles LLC, a Texas limited liability company (the "PROPERTY OWNER"), hereinafter collectively referred to as the "Parties", for the purposes and consideration described herein.

WITNESSETH:

WHEREAS, the PROPERTY OWNER is developing Kissing Tree Phase One, a subdivision located in Hays County, Texas, being more particularly described in that certain map or plat of record in Volume 119, Pages 33-35 of the Plat Records of Hays County, Texas (the "Subdivision"); and

WHEREAS, the PROPERTY OWNER plans to install and maintain, at its sole cost and expense, certain improvements within the CITY's public right-of-way, to include a bridge and associated street improvements, landscaping and subdivision gateway improvements, to include trees, shrubs, fences, walls, irrigation systems and aesthetic and/or decorative improvements to bridge structures (collectively, the "Improvements"); and

WHEREAS, the area of the CITY's right-of-way within which the Improvements are to be installed and/or maintained (the "Licensed Property") is described in the Exhibit "A", which is attached hereto and incorporated herein for all purposes;

NOW, THEREFORE, the CITY and the PROPERTY OWNER agree as follows:

1.   Grant

Subject to the conditions in this Agreement and to the extent of the right, title and interest of the CITY in and to the Licensed Property and without any express or implied warranties, the CITY grants to the PROPERTY OWNER permission to use the Licensed Property to construct, maintain and repair the Improvements existing in the Licensed Property as of the date of this Agreement.

2. Consideration

The CITY and the PROPERTY OWNER each acknowledge the receipt and sufficiency of good and valuable consideration for the execution of this Agreement, including but not limited to the following:

- a. The beautification to be afforded to the community by the Improvements; and
- b. The agreement by the PROPERTY OWNER to provide the below-specified maintenance, insurance and indemnification in favor of the CITY.

3. CITY's Rights to Licensed Property

a. This Agreement is expressly subject and subordinate to the present and future right of the CITY, its successors, assigns, lessees, grantees, and licensees, to construct, install, establish, maintain, use, operate, and renew any public utility facilities, franchised public facilities, roadways or streets on, beneath or above the surface of the Licensed Property. The CITY shall take reasonable measures to prevent damage to any Improvements on the Licensed Property; however, any damage to or destruction of the PROPERTY OWNER'S property by the CITY in the exercise of the above-described rights shall be at no charge, cost, claim or liability to the CITY, its agents, contractors, officers or employees. Nothing in this Agreement shall be construed to limit in any way the power of the CITY to widen, alter or improve the Licensed Property pursuant to official action by the governing body of the CITY or its successors; provided, however, that the CITY shall provide the PROPERTY OWNER with at least thirty (30) days prior written notice of any such contemplated action.

b. NOTWITHSTANDING ANY PROVISIONS IN THIS AGREEMENT TO THE CONTRARY, THE CITY RETAINS THE RIGHT TO ENTER UPON THE LICENSED PROPERTY, AT ANY TIME AND WITHOUT NOTICE, ASSUMING NO OBLIGATION TO THE PROPERTY OWNER, TO REMOVE ANY OF THE IMPROVEMENTS OR ALTERATIONS THEREOF, WHENEVER SUCH REMOVAL IS DEEMED NECESSARY FOR: (A) EXERCISING THE CITY'S RIGHTS OR DUTIES WITH RESPECT TO THE LICENSED PROPERTY; (B) PROTECTING PERSONS OR PROPERTY; OR (C) THE PUBLIC HEALTH OR SAFETY WITH RESPECT TO THE LICENSED PROPERTY.

4. Insurance

a. The PROPERTY OWNER shall, at its sole expense, provide extended public liability insurance coverage, written by a company acceptable to the CITY licensed to do business in Texas, in the amounts of TWO MILLION DOLLARS (\$2,000,000.00) per occurrence and FOUR MILLION DOLLARS

(\$4,000,000.00) in the aggregate for property damage and personal injury and death, which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. Such insurance coverage shall specifically name the CITY as co-insured or as an additional insured. This insurance coverage shall cover all perils arising out or connected in any way to the activities of the PROPERTY OWNER, its officers, employees, agents or contractors, relative to this Agreement. The PROPERTY OWNER shall be responsible for any deductibles stated in the policy. A true copy of each instrument affecting such additional coverage shall be delivered to the CITY within twenty-one (21) days of the effective date of this Agreement.

b. The PROPERTY OWNER shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until thirty (30) days after the CITY has received written notice as evidenced by a return receipt of registered or certified mail.

## **5. Indemnification**

To the extent permitted by Texas law, the PROPERTY OWNER agrees to and shall indemnify, defend and hold harmless the CITY and its officers, agents and employees against all claims, suits, demands, judgments, expenses, including attorney's fees, or other liability for personal injury, death, or damage to any person or property, which arises from or is in any manner connected to or caused in whole or in part by the PROPERTY OWNER'S construction, maintenance or use of the Licensed Property. This indemnification provision, however, shall not apply to any claims, suits, damages, costs, losses or expenses (i) for which the CITY shall have been compensated by Insurance provided under Paragraph 4., above, or (ii) arising from and to the extent of the grossly negligent or willful acts of the CITY; provided that, for the purposes of the foregoing, the CITY'S act of entering into this Agreement shall not be deemed to be a "grossly negligent or willful act".

## **6. Conditions**

a. City Review. Installation of the Improvements is subject to the CITY's prior review and approval of plans and specific locations for the Improvements and the issuance of permits for such Improvements through the CITY's permitting processes under applicable ordinances.

b. Compliance with Regulations. The PROPERTY OWNER agrees that all construction, maintenance and repair permitted by this Agreement shall be done in compliance with all applicable City, County, State and/or Federal policies, traffic, building, health and safety ordinances, laws and regulations, including, without limitation, the CITY's Land Development Code.

c. PROPERTY OWNER'S Responsibilities. The PROPERTY OWNER will be liable for any damage to or relocation of existing facilities required by the construction of the Improvements. Further, the PROPERTY OWNER shall reimburse the CITY for all reasonable costs incurred by the CITY in replacing or repairing any property of the CITY or of others which was damaged or destroyed as a result of activities under this Agreement by or on behalf of the PROPERTY OWNER.

d. Maintenance.

i. Generally. The PROPERTY OWNER shall maintain the Licensed Property by keeping the area free of debris and litter and maintaining the Improvements (but not items located in the Licensed Property that are not Improvements, e.g., roads and sidewalks). Removal of dead or dying plants shall also be handled by the PROPERTY OWNER at its expense.

ii. Additional Bridge Maintenance. The PROPERTY OWNER shall retain a registered professional structural engineer or other duly qualified professional engineer to conduct inspections of the bridge structure and related components at least every two years or, if more frequent, at the same frequency as required by the Texas Department of Transportation, Bridge Division for inspections of bridges in the TXDOT system. Inspections shall also be conducted in response to specific non-routine events that could affecting the structural integrity of the bridge such as collisions with structural components of the bridge, subsidence or earthquakes. Inspection reports shall indicate whether the bridge remains safe for continued use and shall specify what, if any maintenance is required to maintain the safe operation of the bridge. Copies of any such inspection reports shall be provided to the CITY within 30 days of completion by the engineer.

e. Removal or Modification. The PROPERTY OWNER agrees that removal or modification of any improvements now existing or to be later replaced shall be at the PROPERTY OWNER'S reasonable discretion, except where otherwise provided by this Agreement. This Agreement until its expiration or revocation, shall run as a covenant on the land on the above-described real property, and the terms and conditions of this Agreement shall be binding on any successors and assigns in interest to the PROPERTY OWNER or the CITY. A written memorandum of this Agreement shall be filed in the Real Property records of Hays County, Texas.

f. Default. In the event that the PROPERTY OWNER fails to maintain the Licensed Property, then the CITY shall give the PROPERTY OWNER written notice thereof by registered or certified mail, return receipt requested, to the addresses set forth below. The PROPERTY OWNER shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure

complained of and, if the PROPERTY OWNER does not satisfactorily remedy the same within the thirty (30) day period, the CITY may, at the CITY's option, perform the work or contract for the completion of the work. In addition, the PROPERTY OWNER agrees to pay, within thirty (30) days of written demand by the CITY, all reasonable costs and expenses incurred by the CITY in completing the work.

7. Commencement; Termination by Abandonment

This Agreement shall begin on the date of full execution and continue thereafter, unless terminated under other provisions of this Agreement. The CITY shall thereafter have the same title to the Licensed Property so abandoned as though this Agreement had never been made and shall have the right to enter on the Licensed Property and terminate the rights of the PROPERTY OWNER, its successors and assigns hereunder. All installations of the PROPERTY OWNER not removed shall be deemed property of the CITY as of the time abandoned.

8. Termination

a. Termination by CITY. This Agreement may be revoked at any time by the CITY, if such revocation is reasonably required by the public interest, after providing at least thirty (30) days prior written notice to the PROPERTY OWNER. Subject to prior written notification to the PROPERTY OWNER or its successors in interest, this Agreement is revocable by the CITY if:

- i. The Improvements or a portion of them interfere with the CITY'S use of the Licensed Property;
- ii. Use of the Licensed Property becomes necessary for a public purpose;
- iii. The Improvements or a portion of them constitute a danger to the public which the CITY deems not to be remediable by alteration or maintenance of such Improvements;
- iv. Despite thirty (30) days written notice to the PROPERTY OWNER, maintenance or alteration necessary to alleviate a danger to the public has not been made; or
- v. The PROPERTY OWNER fails to comply with the terms and conditions of this Agreement including, but not limited to, the insurance requirements specified herein.

9. Eminent Domain

If eminent domain is exerted on the Licensed Property by paramount authority, then the CITY will, to the extent permitted by law, cooperate with the

PROPERTY OWNER to effect the relocation of the PROPERTY OWNER'S affected installations at the PROPERTY OWNER'S sole expense. The PROPERTY OWNER shall be entitled to retain all monies paid by the condemning authority for its installations taken, if any.

10. Interpretation

In the event of any dispute over its meaning or application, this Agreement shall be interpreted fairly and reasonably and neither more strongly for or against either party.

11. Application of Law

This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the Parties as evidenced by this Agreement.

12. Venue

TO THE EXTENT ALLOWED BY TEXAS LAW, IT IS AGREED THAT VENUE FOR ALL LAWSUITS CONCERNING THIS AGREEMENT WILL BE IN HAYS COUNTY, TEXAS OR, IF IN FEDERAL COURT, THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, AUSTIN DIVISION. THIS AGREEMENT CONCERNS REAL PROPERTY LOCATED IN HAYS COUNTY, TEXAS, AND IS WHOLLY PERFORMABLE IN HAYS COUNTY.

13. Covenant Running with Land

This License Agreement and all of the covenants herein shall run with the land; therefore, the conditions set forth herein shall inure to and bind each party's successors and assigns.

14. Assignment

The PROPERTY OWNER shall not assign, sublet or transfer its interest in this Agreement without the written consent of the CITY; provided, however, notwithstanding the foregoing, PROPERTY OWNER may assign this Agreement to the Homeowner's Association for the Subdivision (the "HOA") with the prior written consent of the CITY; and, provided, further, that this Agreement shall be deemed to be automatically assigned by the PROPERTY OWNER to the HOA at such time as the PROPERTY OWNER transfers to the HOA title to all or substantially all of the common areas contained within the Subdivision. Upon any such assignment or transfer, it shall then be the duty of the PROPERTY OWNER, its successors and assigns, to give prompt written notice to the CITY of

any assignment or transfer of any of the PROPERTY OWNER's rights in this Agreement giving name, date, address and contact person. PROPERTY OWNER hereby agrees to execute any documents reasonably requested by the CITY to further evidence the assignment of this Agreement to the HOA in accordance the provisions of this Section 14.

15. Recitals

The Recitals at the beginning of this Agreement are incorporated into the body of this Agreement.

16. Notice

Any notice and/or statement required or permitted hereunder, shall be deemed to be given and delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses or at such other addresses specified by written notice delivered in accordance herewith:

PROPERTY OWNER:

Carma Paso Robles LLC  
Attn: Max Miller  
11501 Alterra Parkway, Suite 100  
Austin, Texas 78758

with a copy to:

DuBois, Bryant & Campbell LLP  
Attn: E. Scott Lineberry  
303 Colorado, Suite 2300  
Austin, Texas 78758

CITY:

City Manager  
630 East Hopkins  
City of San Marcos  
San Marcos, Texas 78666

EXECUTED AS OF THE DATES SET FORTH IN THE  
ACKNOWLEDGMENTS BELOW.

"CITY"

THE CITY OF SAN MARCOS, TEXAS

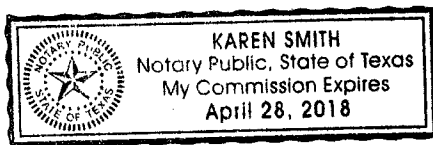
By: [Signature]  
Steve Parker, Asst City Manager  
Printed or Typed Name and Title

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF HAYS       §

This instrument was acknowledged before me on this 30 day of March,  
2017, by Steve Parker, Asst City Manager of the City of San  
Marcos, Texas, a municipal corporation and home-rule city of the State of Texas, on  
behalf of such city.

[Signature]  
Notary Public in and for the State of Texas

Karen Smith  
Printed or Typed Name




My Commission Expires: April 28, 2018



"PROPERTY OWNER"

CARMA PASO ROBLES LLC,  
a Texas limited liability company

By:   
Chad Matheson  
Chief Financial Officer

THE STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

This instrument was acknowledged before me on this 13 day of July,  
2017, by Chad Matheson, Chief Financial Officer of Carma Paso Robles LLC, a Texas  
limited liability company, on behalf of such company.

  
Notary Public in and for the State of Texas

Faith Gardner  
Printed or Typed Name

My Commission Expires: 3/13/19

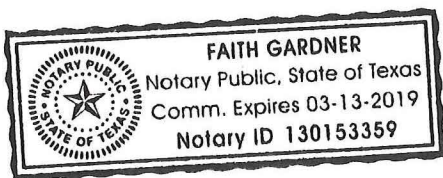


EXHIBIT "A"

RIGHT-OF-WAY

[see attached]

# EXHIBIT A

