

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

LICENSE TO ENCROACH AGREEMENT

Date: March 6, 2018

Licensors: City San Marcos, Texas, a home rule municipal corporation, 630 East Hopkins Street, San Marcos, Hays County, Texas 78666

Licensee: Ricardo Garza Hinojosa, 9801 South Cage Boulevard, Suite 5, Pharr, Texas 78577-9481

Property: 4.492 acres, being all of Post Road Villas, an addition to the City of San Marcos, Hays County, Texas, according to the map or plat of record in Volume 3440, Page 483, Official Public Records of Hays County, Texas, and addressed as 1650 Post Road, San Marcos, Texas 78666, as shown in Exhibit "A," attached hereto and made a part hereof.

License Area: A 30-foot wide strip of right-of-way abutting the Property, as identified in Exhibit "A," attached hereto and made a part hereof.

Consideration: Ten dollars (\$10.00), other good and valuable consideration and the faithful performance of the covenants and conditions established in this License Agreement.

1. Purpose. The License Area is located within a portion of public right-of-way adjacent to the Property not presently open for public use. Licensee is the owner of the Property and seeks to install driveway access and trash and recycling enclosures that will serve the Property (the "Improvements") within the License Area. The purpose of this License Agreement is to establish terms and conditions under which Licensee may maintain the Improvements within the License Area.

2. Grant of License. For the Consideration, Licensors hereby grants a non-exclusive License to the Licensee to maintain the improvements.

3. No Abandonment. Neither the granting of the License, nor any related permit, constitutes an abandonment by Licensors 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.

4. 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 public utility, or equipment, except as specifically approved by the appropriate departments of Licensors in writing.

5. 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 the License Area 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

6. No Enlargement of Improvements. The license granted herein is subject to the requirement that the Improvements shall not expanded or altered beyond the specifications and plans approved by the City at the time the Improvements are initially installed by Licensee, except ordinary maintenance may be performed on the Improvements.

7. 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.

8. 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 Improvements are in violation of applicable City of San Marcos ordinances, e.g., unsafe structure presenting danger to passersby, Licensors, 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 Licensors, Licensors may file a lien against the Property in the amount of the invoice, plus interest accruing at the rate of 10 percent per annum until paid.

9. Extra Costs. In the event that any installation, reinstallation, relocation or repair of any existing or future public improvements by the City within the License Area is made more costly by virtue of the construction, maintenance or existence of the Improvements, Licensee shall, within 30 days of receipt of an invoice from the City, pay to Licensors an amount equal to such additional cost as determined by the Licensors. If Licensee fails to timely pay such invoice, Licensors may file a lien against the Property in the amount of the invoice, plus interest accruing at the rate of 10 percent per annum until paid.

8. Insurance. This License Agreement shall not be effective unless and until Licensee files with Licensors a certificate of liability insurance or other proof of insurance in a form acceptable to Licensors'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 Licensors 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 Licensors upon providing written notice of termination to Licensee.

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

10. Removal of Improvements. If Licensors, in its sole discretion, determines that temporary or permanent removal of all or portions of the Improvements is necessary for exercising Licensors's rights or duties in regard to the License Area, or for protecting persons or property, Licensors will provide written notice thereof to Licensee and, within the time specified in such written notice, Licensee shall remove the Improvements or such portions thereof. If Licensee fails to undertake such removal within the time specified in the written notice, Licensors retains the right to enter upon the License Area and, at Licensee's expense, undertake such removal. As to the portions of the Improvements removed, other than a temporary removal requested and approved by Licensors, this License Agreement shall automatically expire and the License Area be reduced accordingly.

11. Assignment; Binding on Successors. Subject to providing advance written notice of assignment to Licensor, Licensee may assign this License Agreement to subsequent purchasers of the Property. This License Agreement shall be binding upon subsequent owners of the Property. This License Agreement shall be filed in the Official Public Records of Hays County Texas.

12. Revocation or Termination of License. In addition to any other rights of termination herein or remedies available at law or in equity, Licensor may revoke or terminate this License Agreement 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 Improvements or any portion of them interfere with the rights of the Licensor or the public in or to the License Area;
- 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 a portion of them have expanded;
- e. maintenance or alteration of the Improvements necessary to alleviate a danger to the public has not been made within a reasonable time after the dangerous condition has arisen; or
- f. Licensee provides written notice of termination for convenience at least 180 prior to the effective date of termination stated in the notice.

13. 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, or such other condition as approved by Licensor.

14. Integration; Amendments. This License Agreement constitutes the entire agreement between Licensor and Licensee on this subject, and it may be amended only by written instrument executed by both parties.

15. No Real Property Interest. This license does not constitute an interest in real property, and Licensee fully accepts the risks associated with incurring expenses with regard to the Improvements while having only a revocable right to use the License Area.

16. 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.

[SIGNATURES ON NEXT PAGE]

EXECUTED to be effective as of the date first written above.

LICENSEE:
RICARDO GARZA HINOJOSA

LICENSOR:
CITY OF SAN MARCOS, TEXAS

By: _____
Bert Lumbreras, City Manager

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF HAYS)

This instrument was acknowledged before me on the _____ day of March, 2018, by Bert Lumbreras, 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 _____)

This instrument was acknowledged before me on the _____ day of March, 2018, by Ricardo Garza Hinojosa.

Notary Public, State of Texas

EXHIBIT A

Property, License Area and Location of Improvements
(next page)