

## **LICENSE AGREEMENT**

**Date:** \_\_\_\_\_

**City:** City of San Marcos, 630 E. Hopkins Street, San Marcos, Hays County, Texas 78666

**Licensee:** E&T Real Estate LLC, 142 Cimarron Park Loop, Suite A, Buda, Hays County, Texas 78610.

**License Area:** The area of the unimproved right-of-way of Hillyer Street, as more fully depicted in Exhibit A, attached hereto and made a part hereof.

**Licensee Property:** Lot 557, Block 42, Westover Addition, City of San Marcos, Hays County, Texas

**Consideration:** Ten and no/100 Dollars and other good and valuable consideration, including the Licensee's performance of its obligations under this Agreement.

### **RECITALS**

**A.** The Licensee desires to pave all or portions of the License Area to the City's driveway standards (the "Improvements") in order to improved vehicular access to the Licensee Property located at 1105 Hillyer Street, San Marcos, Texas.

**B.** The City is willing to grant to the Licensee a license for the Improvements in the License Area, subject to the terms hereof.

### **GRANT OF LICENSE; TERMS AND CONDITIONS**

For the Consideration, the City grants and demises to the Licensee a non-exclusive license to install, operate, and maintain the Improvements in the License Area, subject to the following:

**1. City Permits and Approvals.** The Licensee agrees to apply for and obtain all applicable permits from the City, including a right-of-way construction permit, as may be required for the construction or reconstruction activities in the License Area. The Improvements shall be at least 14 feet wide, and all final plans and specifications for the Improvements shall be subject to approval by the city manager of the City, acting through the City departments designated by the city manager.

**2. Compliance with Laws and Regulations.** The Licensee agrees to comply with all federal, state and local laws, construction and safety codes, and other regulations in the construction and maintenance of the Improvements in the License Area. The Licensee agrees to comply with all City of San Marcos standards and regulations related to the construction and maintenance of the Improvements in the License Area. The Licensee agrees to maintain safe and proper clearances from all above-ground and underground utility facilities within or upon the License Area at all times. The Licensee will maintain the Improvements in good condition, fit for their intended purposes, and with due regard for public safety and convenience. The Licensee will promptly remove or correct any hazards upon the License Area created by storms, accidents, vandalism or other causes.

**3. Right of Use of License Area by City and Public Utilities.** The City reserves the right at all times, for itself and all public utilities authorized to use the License Area for right-of-way and public utility purposes, to perform street and utility construction and maintenance activities in the License Area,

including those that involve excavation, trenching, pole and wire placement, or other activities that may affect the Improvements. The City and the authorized utilities will endeavor to notify the Licensee in advance of any construction or maintenance activities, but they make no commitment to do so. The surface of the License Area will be restored to a level condition upon completion of the construction or maintenance activities. The City may, but is not obligated to repave any areas of the pavement damaged by such activities. If the City does not repave any such damaged parts of the pavement, the Licensee will be responsible for replacing any paving materials, or other affected portions of the Improvements. The Licensee will perform the replacement only in a manner and to the extent that the replacement does not interfere with or impede the use of the License Area for right-of-way and public utility purposes.

**4. Payment of Extra Costs to the City.** Licensee shall pay all reasonable, actual and documented costs of relocation of any public utilities or facilities that may be incurred as a result of the construction of the Improvements. 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 costlier by virtue of the construction, maintenance or existence of the Improvements, Licensee shall pay to City an additional amount equal to such additional cost as reasonably determined by the City Manager or designee.

**5. Indemnification and Hold Harmless.**

**a. The Licensee agrees to indemnify, hold harmless and defend the City, its officers and employees from and against any claims or liability which may be incurred by reason of any act or omission of the Licensee, its agents or contractors in connection with the Licensee's use of the License Area. Such indemnification shall include the payment of reasonable attorney's fees and costs of court and litigation.**

**b. The Licensee agrees to hold harmless the City and all public utilities authorized to use the License Area, and their officers, agents and employees, from any damages to the Improvements that are caused in any way in connection with the use of the License Area for right-of-way and public utility purposes by the City or any such utility or their officers, agents or employees.**

**6. Termination by City.**

**a. The city manager of the City may terminate and revoke this License Agreement if the Licensee violates this Agreement and fails to cure the violation within 10 days after the City gives the Licensee written notice of the violation. Alternatively, the City may act to cure any violation of this Agreement by the Licensee, and collect the costs of curing the violation from the Licensee. If any invoice for such costs is not fully paid within thirty days of its issuance by the City, the Licensee expressly grants the City the right to record a lien against the Licensee Property for the unpaid amount of the invoice.**

**b. The city manager of the City may, otherwise, revoke or terminate this License Agreement by written notice thereof to Licensee upon the occurrence of any of the following conditions or events:**

**i. The Improvements or any portion of them unreasonably and materially interfere with the rights of the City or the public in or to City's License Area, as determined by the city manager in the city manager's sole discretion;**

ii. The use of the licensed area becomes necessary for a public purpose, as determined by the city manager in the city manager's sole discretion; or

iii. The Improvements or a portion of them constitute a danger to the public which is not remediable by maintenance or alteration of the Improvements, as determined by the city manager in the city manager's sole discretion;

iv. The Improvements or a portion of them have expanded beyond the scope of the approved encroachment; or

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

c. The city manager of the City may terminate this Agreement for any other reason by giving Licensee 60 days' written notice of termination.

d. The paving of the License Area to a full applicable City street standard by or on behalf of the City will operate as an automatic termination of this Agreement.

e. In the event of any such a termination, however, the Licensee will continue to have the same right of access across the street as the public.

**7. Integration; Amendments.** This Agreement constitutes the entire Agreement between City and Licensee on this subject, and it may be amended only by written instrument executed by both parties.

**8. No Warranty. THE CITY MAKES NO WARRANTY OF TITLE IN CONNECTION WITH THIS LICENSE AGREEMENT. THE LICENSEE ACKNOWLEDGES AND UNDERSTANDS THAT THIS LICENSE DOES NOT CONSTITUTE AN INTEREST IN REAL LICENSE AREA, 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. THE CITY MAKES NO REPRESENTATIONS REGARDING THE CONDITION OF THE LICENSE AREA AND THE LICENSEE ACCEPTS THE LICENSE AREA "AS-IS" WITH ALL FAULTS.**

**9. Binding on successors-in-interest.** This License Agreement, until its expiration or revocation, shall run with the title to the Licensee Property, 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.

**10. Venue.** Exclusive venue for any legal dispute under this Agreement is in the state court in Hays County, Texas having jurisdiction over the dispute.

[SIGNATURES ON NEXT PAGE]

**CITY:**

**LICENSEE:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENTS**

STATE OF TEXAS

COUNTY OF HAYS

This instrument was acknowledged before me on \_\_\_\_\_, 2020 by \_\_\_\_\_, \_\_\_\_\_ of the City of San Marcos, 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 \_\_\_\_\_, 2020 by \_\_\_\_\_, \_\_\_\_\_ of E&T Real Estate LLC, in such capacity, on behalf of said entity.

\_\_\_\_\_  
Notary Public, State of Texas

## **EXHIBIT A**