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Date Received: _____ Record Number: _____

Time Received: _____ City Secretary No.: _____

PUBLIC PROPERTY ENCROACHMENT LICENSE AGREEMENT

THIS AGREEMENT is made and entered into by and between THE CITY OF FORT WORTH, a home rule municipal corporation of Tarrant County, Texas ("City"), acting by and through its duly authorized City Manager, Assistant City Manager, or Director of the Development Services Department, and _____, a(n) ("Licensee"), acting by and through its duly authorized _____.

RECITALS

WHEREAS, Licensee is the owner of the real property located at _____, Fort Worth, Texas 76 _____ ("Property"), being more particularly described as, _____, an addition to the City of Fort Worth, Tarrant County, Texas, as recorded in Deed Records, by Instrument Number _____; and

Commented [ORD1]: Warranty Deed specific information

WHEREAS, the City owns a _____ (the "Public Property") adjacent to the Property, dedicated by plat, depicted on the final plat of the property (_____), which plat is recorded in the plat records of Tarrant County as Instrument _____ and;

WHEREAS, the City owns a _____ (the "Public Property") adjacent to the property, dedicated to the City in an easement filed in the Tarrant County Deed Records as Instrument Number _____, as depicted on the final plat of the property (_____), which plat is recorded in the plat records of Tarrant County as Instrument Number _____; and

Commented [ORD2]: Location specific information

WHEREAS, Licensee desires to construct, place, and maintain certain improvements which will encroach in, on, above, or below the Public Property; and

WHEREAS, to accommodate the needs of the Licensee, the City will allow the encroachment under the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, the City and Licensee agree as follows:

AGREEMENT

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1.

The City, in consideration of the payment by Licensee of the fee set out below and covenants and agreements hereinafter contained to be kept and performed by Licensee, hereby grants permission to Licensee to encroach in, on, above, or below and occupy a portion of the City's Public Property as described in and at the location shown on Exhibit "A," but only to the extent shown thereon, for the purpose of constructing, installing, and maintaining a [] (the "Encroachment"). Upon completion of the Encroachment, Licensee agrees to be responsible for maintaining the Encroachment within the Public Property. Licensee shall not expand or otherwise cause the Encroachment to further infringe in or on the Public Property beyond what is specifically described in Exhibit "A."

Commented [ORD3]: List of improvements encroaching the Right-of-Way City Easement.

2.

[All construction, installation, maintenance, and operation of the Encroachment and the use or occupancy of the Public Property shall comply with and be performed in strict compliance with this Agreement and with the charter, ordinances, codes, and policies of the City. Prior to the construction or installation of the Encroachment, Licensee shall submit all plans and specifications to the Director of the Development Services Department or duly authorized representative. Licensee shall not commence construction or installation of the Encroachment nor make any use of the Public Property until after the execution of this Agreement.]

Commented [ORD4]: No work to install the encroachment improvement can begin until this agreement is executed. All responsibility of knowing and adhering to all applicable rules and regulations associated with this work belong to the person/Entity entering into this agreement.

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 and the use and occupancy of the Public Property, including the securing the approval and consent of the appropriate utility companies and agencies of the State of Texas and its political subdivisions. In the event that any installation, reinstallation, relocation, or repair of any existing or future utility or improvements owned by or 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 the Encroachment and use of Public Property, Licensee shall pay to City an additional amount equal to such additional cost as determined by the Director of Transportation and Public Works, the Director of the Water Department, the Director of the Development Services Department, or their duly authorized representative.]

Commented [ORD5]: If the improvement(s) outlined in the agreement create a conflict with existing or future utilities, the person/Entity entering into this agreement is responsible for costs associated with any installation, reinstallation, relocation, and/or repair of existing or future utility owned by or constructed on behalf of the public.

4.

[Licensee agrees that City may enter and utilize the Public Property at any time for any public purpose, including installing, repairing, replacing, or maintaining improvements to its public facilities or utilities necessary for the health, safety, and welfare of the public. The City shall have no responsibility or liability for any damages related to the Encroachment resulting from the City's use of the Public Property; however, the City shall make reasonable efforts to minimize such damage.]

Commented [ORD6]: The City retains access and utilization rights to the Public Property, and has no liability for damages to the encroachment from the City's use.

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5.

Upon termination of this Agreement, Licensee shall, at the option of and at no expense to the City, remove the Encroachment and restore the Public Property to a condition acceptable to the Director of Transportation and Public Works, the Director of the Water Department, the Director of the Development Services Department or their duly authorized representative. Any such removal of the Encroachment shall be in accordance with then-existing City regulations and policies. It is understood and agreed to by Licensee that if this Agreement terminates and Licensee fails to remove the Encroachment and restore the Public Property, Licensee hereby gives City permission to remove the Encroachment and any supporting structures from the Public Property, to restore the Public Property, and to assess a lien on the Property for the costs expended by the City in taking such actions.

Commented [ORD7]: Encroachment termination responsibilities of the person/Entity entering into this agreement upon expiration.

6.

In order to defray all costs of inspection and supervision which the City has incurred or will incur as a result of the construction, maintenance, inspection or management of the Encroachment and use of Public Property as provided for by this Agreement, Licensee agrees to pay to City at the time this Agreement is requested an application fee in the sum of **One Thousand Twelve Dollars and Fifty Cents (\$1012.50)**. Additionally, Licensee agrees to pay a fee in the amount of **\$2.25** per square/linear foot of the encroachment area upon execution of this Agreement and annually thereafter.

Commented [ORD8]: Encroachment Application fee cost

Commented [ORD9]: If Tier II ROW Encroachment, an annual fee may apply. The first year is due at contract execution. Tier III ROW Encroachments require City Council approval

7.

The term of this Agreement shall be for **thirty (30) years**, commencing on the date this Agreement is executed by City. However, the City may terminate this Agreement upon Licensee's noncompliance with any of the terms of this Agreement. City shall notify Licensee in writing of any such noncompliance and if Licensee does not cure the noncompliance within thirty (30) days of notice from City, the City may terminate this Agreement. However, the City may, at its sole option, allow the Agreement to remain in effect so long as Licensee has taken reasonable measures to cure the noncompliance or is continuing to diligently attempt to remedy the noncompliance.

Commented [ORD10]: The term for an encroachment agreement is 30 years. If the encroachment remains after 30 years, the person/Entity who entered into this agreement shall apply to execute a new agreement for the existing encroachment.

Commented [ORD11]: Noncompliance notification and resolution

8.

It is further understood and agreed between the parties hereto that the Public Property to be used and encroached upon is held by City as trustee for the public; that City exercises such powers over the Public Property as have been delegated to it by the Constitution of the State of Texas or by the Texas Legislature; and that City cannot contract away its duty and its legislative power to control the Public Property 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 Public Property to be used for any other public purpose, including but not being limited to Encroachment Agreement

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underground, surface, or overhead communication, drainage, sanitary sewerage, transmission of natural gas or electricity, or any other public purpose, whether presently contemplated or not, that the parties agree to negotiate in good faith in order to accommodate both the Encroachment and the public purpose.

Commented [ORD12]: The City may, at any time, act to control the Public Property for the use and benefit of the public.

9.

LICENSEE COVENANTS AND AGREES TO INDEMNIFY, AND DOES HEREBY INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, AND ELECTED OFFICIALS 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 THE ENCROACHMENT AND USES GRANTED HEREUNDER, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY THE ALLEGED NEGLIGENCE OF OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, ELECTED OFFICIALS, 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 THE ENCROACHMENTS AND ANY AND ALL ACTS OR OMISSIONS OF LICENSEE, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, OR INVITEES.

Commented [ORD13]: The person/Entity entering into this agreement is solely responsible for any and all liability from the encroachment within the public Right-of-Way or Easement.

10.

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

Commented [ORD14]: To execute an encroachment agreement the person/Entity entering into the agreement must supply the City with a Certificate of Insurance showing proof of public liability insurance coverage, listing the encroachment.

\$1,000,000

with the understanding and agreement by Licensee that such insurance amounts may 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 not be canceled or amended without at least thirty (30) days prior written notice to the Building Official of the City. A copy of such Certificate of Insurance is attached as Exhibit "B" and incorporated herein for all purposes. Licensee agrees, binds, and obligates itself and its successors and assigns to maintain and keep in force such public liability insurance at Encroachment Agreement

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all times during the term of this Agreement and until the removal of the Encroachment and restoration of the Public Property. All insurance coverage required herein shall include coverage of all Licensee's contractors and subcontractors.

11.

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 Agreement in the real property records of the county in which the Encroachment is located. After being recorded, the original shall be returned to the City Secretary of the City of Fort Worth.

Commented [ORD15]: Encroachment Agreements are recording with the County of record. The fee for recording the agreement with the county is collected by the City to record the agreement.

12.

Licensee agrees to comply fully with all applicable federal, state, and local laws, statutes, ordinances, codes, and regulations in connection with the construction, operation, and maintenance of the Encroachment and use of the Public Property.

Commented [ORD16]: It is the responsibility of the person/Entity entering into this agreement to know and adhere to the relevant laws, statutes, ordinances, codes, and/or regulations as related to the use of the Public Property outlined in this agreement.

13.

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.

14.

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 respondeat 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.

Commented [ORD17]: The person/Entity and all current and/or future employees, contractors, and all other possible stakeholders associated with the person/Entity are considered independent contractors. The execution of an Encroachment Agreement does not create, imply, or construe employment with and/or partnership with the City of Fort Worth.

15.

Licensee agrees and acknowledges that this Agreement is solely for the purpose of permitting Licensee to construct, maintain, and locate the Encroachment over or within the Public Property and is not a conveyance of any right, title, or interest in or to the Public Property, 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 permissions before occupying such property.

Commented [ORD18]: An executed Encroachment Agreement does not extend or convey a property right.

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16.

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

Commented [ORD19]: The City reserves the right to recover legal expenses if necessary to enforce the person/Entity's obligations established in this agreement.

17.

The parties agree that the duties and obligations contained in Section 5 shall survive the termination of this Agreement.

Commented [ORD20]: The responsibilities outlined in Section 5 remain until resolved.

18.

Licensee covenants and agrees that it will not assign all or any of its rights, privileges, or duties under this Agreement without the written approval of the City, and any attempted assignment without such written approval shall be void. In the event Licensee conveys the Property, Licensee may assign all of its rights and obligations under this Agreement to the new owner of the Property, and Licensee shall be deemed released from its duties and obligations hereunder upon City's approval in writing of such assignment, which approval shall not be unreasonably conditioned or withheld. Foreclosure by a secured lender of Licensee or assignment to a secured lender by Licensee in the event of default or otherwise shall not require City approval provided that said lender notifies City in writing within sixty (60) days of such foreclosure or assignment and assumes all of Licensee's rights and obligations hereunder. However, no change of ownership due to foreclosure or assignment to any secured lender of Licensee shall be effective as to City unless and until written notice of such foreclosure or assignment is provided to City.

Commented [ORD21]: In order to assign the responsibilities of this agreement, the person/Entity must amend the agreement to reflect the assignment.

19.

Prior to the end of the term of this Agreement, Licensee may submit a new encroachment application to the City. The City will not unreasonably withhold or delay approval of such application provided that the Encroachment follows the then current City codes and compliance.

20.

Any cause of action for breach of this Agreement shall be brought in Tarrant County, Texas. This Agreement shall be governed by the laws of the State of Texas.

21.

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

22.

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This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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EXECUTED to be effective on the date signed by the City's Director of Development Services Department

City:

CITY OF FORT WORTH

By: _____

D. J. Harrell

Director, Development Services Department

Date: _____

ATTEST:

Approved As To Form and Legality

Jannette Goodall,
City Secretary

Hye Won Kim
Assistant City Attorney

Contract Compliance Manager:

By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.

Rebecca Owen
Development Services Manager

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Licensee:

By: _____

Name:

Title:

Date: _____

STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of _____, on this day personally appeared _____, _____ (Title) known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he or she executed the same for the purposes and consideration therein expressed, as the act and deed of _____, a _____ (entity type), and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 2024.

Notary Public in and for the
State of _____

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*****THIS PAGE FOR CITY OF FORT WORTH OFFICE USE ONLY*****

STATE OF TEXAS §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **D.J. Harrell**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of the **City of Fort Worth**, 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

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EXHIBIT A
Depiction and description of the Encroachment

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EXHIBIT B
Certificate of Insurance

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