

CITY OF SCHERTZ LICENSE AGREEMENT

The City of Schertz, a home-rule city, municipal corporation and political subdivision of the State of Texas situated in Guadalupe, Bexar, and Comal Counties, Texas ("CITY"), and PV Schertz, LLC, a Texas limited liability company ("Licensee"), enter into this License Agreement ("Agreement") on this the _____ day of _____, 2022, upon the terms and conditions set forth below.

I. PURPOSE OF LICENSE AGREEMENT

The CITY grants to Licensee, its successors and assigns, license and permission to occupy by encroachment and to use the areas described in this paragraph for the following purposes only:

To install, maintain, repair and replace a commercial driveway as depicted in Exhibit "A", within the City's right of way generally located at 17975 IH-35 N as depicted in Exhibit "B".

The above descriptions, hereinafter referred to as the "licensed property", are further described in Exhibits "A" and "B" attached to this Agreement and incorporated by references for all purposes.

The CITY makes this grant solely to the extent of its right, title and interest in the licensed property, without any express or implied warranties.

Licensee agrees that all activities permitted by this Agreement shall be done in compliance with all applicable City, County, State and/or Federal police, traffic, building, health and safety ordinances, laws and regulations now existing or later adopted.

The License granted hereby is for the benefit of Licensee's property described on Exhibit "C" attached hereto and incorporated by herein by reference ("Licensee's Property").

II. ANNUAL FEE

The CITY, its governing body, and its respective successors and assigns agrees to waive an annual fee for the license and permission herein granted to Licensee in lieu of a one-time, upfront flat fee identified in Section VI.D of this Agreement.

III. CITY'S RIGHTS TO LICENSED PROPERTY

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, alter and/or renew any public utilities facilities, roadways or streets on, beneath or above the surface of the licensed property described in Paragraph I.

Said uses of the licensed property by the CITY are permitted, provided that they do not substantially interfere with or destroy Licensee's use of the licensed property or Licensee's Property, or any property or improvements placed thereon or therein by Licensee. In case of an officially declared emergency, however, damage to or destruction of the licensed property 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 subject to this Agreement pursuant to official action by the governing body of the CITY, or its successors. The City does, however, agree to cooperate with Licensee to effect the relocation of Licensee's installations and improvements in the event of such widening, altering or improvement of such street areas and, further, to cooperate with Licensee wherever possible, to effect such widening, altering or improving of such street areas so

that Licensee's operations and improvements on Licensee's Property will not be materially affected thereby.

Notwithstanding any provision 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 Licensee, to remove any of the licensed 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.

IV. INSURANCE

Licensee shall, at its sole expense, provide additional extended public liability insurance coverage, written by a company reasonably acceptable to the CITY and licensed to do business in Texas, in the amounts of \$250,000 for property damage and \$500,000 for 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. This insurance coverage shall cover all perils arising from the activities of Licensee, its officers, employees, agents, or contractors, relative to this Agreement. Licensee shall be responsible for any deductibles stated in the policy. A true copy of each instrument effecting such additional coverage shall be delivered to the CITY'S Director of Transportation and Public Services within thirty (30) days prior to the effective date of this Agreement, which shall be the date this Agreement is executed by the CITY.

Licensee 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 forty-five (45) days after the CITY has received written notice as evidenced by a return receipt of registered or certified mail.

V. INDEMNIFICATION

Licensee 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 caused by the Licensee'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 IV., above, or (ii) arising solely from the negligence of the CITY.

VI. CONDITIONS

- A. Licensee's Responsibilities. Licensee will be responsible for any damage to or relocation of existing facilities within the licensed property. Further, Licensee shall reimburse the CITY for all costs of 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, Licensee.
- B. Maintenance. Licensee shall maintain the licensed property by keeping the area free of debris and litter. Removal of dead or dying plants shall also be handled by Licensee at its expense, as required by the CITY; such removal shall be completed within thirty (30) days following receipt of a written request by the CITY to do so.

- C. Removal or Modification. Licensee agrees that during the term of this Agreement removal or modification of any landscaping within the licensed property now existing or to be later replaced shall be at Licensee's expense. Said removal or modification shall be at Licensee's sole discretion, except where otherwise provided by this Agreement. However, complete removal of all such improvements must be preceded by at least thirty (30) days written notice to any owners of land immediately adjacent to the licensed property (other than Licensee), if any. This Agreement, until its expiration or revocation shall run as a covenant on the land benefitting and burdening Licensee's Property, and the terms and conditions of this Agreement shall be binding on any subsequent owners or holders of Licensee's Property. Licensee shall cause any immediate successors in interest to have actual notice of this Agreement.
- D. License Fee. Licensee shall pay the CITY \$0.77/SF of improvements placed in the public right-of-way for a total of \$8,659.42. Payment shall be made prior to the CITY executing this Agreement. This fee is non-refundable, unless this Agreement is terminated within one (1) year following the effective date hereof.

VII. COMMENCEMENT; TERMINATION BY ABANDONMENT

This Agreement shall begin with the effective date and continue thereafter for so long as the licensed property shall be used for the purposes set forth herein. If Licensee abandons the use of all or any part of the licensed property for such purposes set forth in this Agreement, then this Agreement, as to such portion or portions abandoned, shall expire and terminate following thirty (30) days written notice to Licensee if such abandonment has not been remedied by Licensee within such period; the CITY shall thereafter have the same complete title to the licensed property so abandoned as though this Agreement had never been made and shall have the right to enter on the property and terminate the rights of Licensee, its successors and assigns hereunder. All installations of Licensee not removed shall be deemed property of the CITY as of the time abandoned. For the purposes of this Agreement, Licensee shall be deemed to have abandoned its use of the licensed property if neither Licensee or its tenants, invitees, contractors, or customers makes any use of the licensed property for a period of sixty (60) consecutive days or more, excluding any periods where use of the licensed property was prevented by flood, earthquake, fire, acts of god, public emergencies or other events beyond the control of Licensee.

VIII. TERMINATION

- A. Termination By Licensee. This Agreement may be terminated by Licensee by delivering written notice of termination to the CITY not later than thirty (30) days before the effective date of termination. If Licensee so terminates, then it may remove installations that it made from the licensed property within the thirty-day notice period. Any installations not removed within said period are agreed to be the property of the CITY.
- B. Termination By CITY. This Agreement may be revoked at any time by resolution of the City Council if such revocation is reasonably required by the public interest, after providing written notice to Licensee.

Subject to prior written notification to Licensee or its successors in interest, this Agreement is revocable by the CITY if:

1. The licensed improvements, or a portion of them, interfere with the City's right-of-way, and it is infeasible for the City to cooperate with Licensee to effect the relocation of Licensee's affected installations and improvements thereon, at Licensee's sole expense;
2. Use of the licensed property becomes necessary for a public purpose, and it is infeasible for the City to cooperate with Licensee to effect the relocation of Licensee's affected installations and improvements thereon, at Licensee's sole expense;
3. Any of the improvements or any material portion of thereof within the licensed property not approved in advance by the CITY constitute a danger to the public which the CITY deems not to be remediable by alteration or maintenance of such improvements;
4. Despite thirty (30) days written notice to Licensee, maintenance or alteration necessary to alleviate a danger to the public has not been made; or
5. Licensee fails to comply with the terms and conditions of this Agreement including, but not limited to, any insurance or license fee requirements specified herein, within thirty (30) days after receipt of notice from the CITY.

If Licensee abandons or fails to maintain the property, and the CITY receives no substantive response within thirty (30) days following written notification to Licensee, then the CITY may remove and/or replace all licensed improvements and collect from Licensee the CITY's actual expenses incurred in connection therewith.

IX. 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 Licensee to effect the relocation of Licensee's affected installations and improvements thereon, at Licensee's sole expense. Licensee shall be entitled to retain all moneys paid by the condemning authority for installations taken, if any.

X. INTERPRETATION

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

XI. 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.

XII. VENUE

Venue for all lawsuits concerning this Agreement will be in the City of Schertz, Guadalupe County, Texas.

XIII. COVENANT RUNNING WITH LAND; WAIVER OF DEFAULT

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. Either party

may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

XIV. ASSIGNMENT

Licensee shall not assign, sublet or transfer its interest in this Agreement without the written consent of the CITY, which consent shall not be unreasonably withheld. Subject to the assignee's compliance with the insurance and letter of credit requirements set forth herein, Licensee shall furnish to the CITY a copy of any such assignment or transfer of any of Licensee's rights in this Agreement, including the name, date, address, and contact person.

IN WITNESS HEREOF, the parties hereto have executed this contract:

CITY OF SCHERTZ

LICENSEE

By: _____

By: _____

_____ (printed name)

Title: