

**LICENSE AGREEMENT**  
**For Administratively-Approved Encroachment in Right-of-Way**

The City of Kyle, Texas a municipal corporation and political subdivision of the State of Texas situated in Hays County, Texas (“the City” or “Licensor”), and the \_\_\_\_\_, \_\_\_\_\_, (“Licensee”) enter into this License Agreement (“Agreement”) on this the \_\_\_ day of \_\_\_\_\_, 20\_\_, upon the terms and conditions set forth below.

**I. PURPOSE OF LICENSE AGREEMENT.** The City grants to Licensee permission to use the licensed property for the following purposes only:

Construction, installation, and maintenance of the following improvements located in the right-of-way of \_\_\_\_\_ (*name right-of-way*), located in Kyle, Hays County, Texas, being more particularly described in Exhibit A attached hereto and incorporated herein for all purposes (the “licensed property”), being: \_\_\_\_\_; hereinafter referred to as the “Improvements”.

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: (A) the construction of the Improvements permitted by this Agreement shall be done in compliance with all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted; (B) that all construction and installation of the Improvements will be completed in a timely manner without delay; (C) the Licensee will construct the Improvements according to approved permit application and plans filed with the City, except as modified by the Agreement; and (D) any changes in construction will be approved by the City. Any provision herein to the contrary notwithstanding, Licensee shall be liable for, and shall indemnify and hold the City harmless from all damages, causes of action, and claims arising out of or in connection with Licensee's installation, operation, maintenance or removal of the improvements permitted under this Agreement.

**II. FEE.**

Designated parking space - 6 month term

The fee for the first space requested for encroachment is \$250.00.

The fee for the second space requested for encroachment is \$300.00.

The fee for the third space requested for encroachment is \$350.00.

The fee for every additional space is the fee for the immediately preceding fee amount plus \$50.00.

Other areas requested for encroachment – 6 month term

The fee for an area approximately 9’ x 18.5’ or approximately 166 square feet is \$250.00.

The fee for every additional area is the fee for the immediately preceding fee amount plus \$50.00.

**III. THE 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, and renew any public utilities facilities, franchised public utilities, rights-of-way, roadways, or streets on, beneath, or above the surface of the licensed property. Said uses of the licensed property by the City are permitted even

though such use may substantially interfere with or destroy Licensee's use of the licensed property, or the Improvements.

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 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. The Licensee agrees that the City, its agents, contractors, officers, or employees, will not be liable for any charge, cost, claim, damages, or liability related to the removal of, damage to, or destruction of Licensee's property under this Section.

**IV. INSURANCE.** Licensee shall, at its sole expense, provide a commercial general liability insurance policy, written by a company acceptable to the City and licensed to do business in Texas, with a combined single limit of not less than \$600,000.00, which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. Such insurance coverage shall include the City as an additional-insured. This insurance coverage shall cover all perils arising from the activities of Licensee, its officers, employees, agents, or contractors, relative to this Agreement, or otherwise within the public right-of-way and property within the licensed area. Licensee shall be responsible for any deductibles stated in the policy. A certificate of insurance evidencing such coverage shall be delivered to the City Secretary of the City within thirty (30) days of the effective date of this Agreement.

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 or maintenance of the Improvements or use of the licensed property. This indemnification provision, however shall not apply to any claims, suits, damage, costs, losses, or expenses arising solely from the 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 "negligent or willful act."

#### **VI. CONDITIONS.**

A. **Licensee's Responsibilities.** Licensee will be responsible for any damage to or repair of the Improvements. 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. Licensee shall further comply with all requirements of Chapter 38, Article II, Division 2 of the Kyle Code of Ordinances, which are incorporated herein by reference.

B. **Maintenance.** Licensee shall maintain the licensed property and the Improvements in good condition and making any necessary repairs to the Improvements at its expense.

C. **Modification of Improvements.** Licensee agrees that modification of the Improvements shall be at Licensee's expense and may only be performed after authorization from the City. Licensee shall obtain the proper permits prior to modification of the Improvements using the process set forth in Division 2, Article II, Chapter 38, City Code of Ordinances.

D. **Default.** In the event that Licensee fails to maintain the licensed property or otherwise comply with the terms or conditions as set forth herein, then the City shall give Licensee written notice thereof, by registered or certified mail, return receipt requested, to the address set forth below. Licensee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of, and, if Licensee does not satisfactorily remedy the same within the thirty (30) day period, the City may terminate this Agreement.

**Licensee Address**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Licensor Address**

City of Kyle  
Attention: City Manager  
100 W. Center Street  
Kyle, Texas 78640

**VII. COMMENCEMENT AND TERMINATION.** This Agreement shall begin with the effective date and continue thereafter for so long as Licensee is constructing or maintaining the Improvements as set forth herein. If Licensee abandons construction or maintenance of all or any part of the Improvements or licensed property as set forth in this Agreement, then this Agreement, shall expire and terminate following thirty (30) days written notice to the Licensee if such abandonment has not been remedied by the 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 the licensed 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.

**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 shall remove the Improvements and any other installations that it made from the licensed property within the thirty day notice period at its sole cost and expense. Failure to do so shall constitute a default under this Agreement.

B. **Termination by City.** Subject to prior written notification to Licensee or its successor-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;
2. Use of the right-of-way area becomes necessary for a public purpose;
3. The licensed improvement, or a portion of them, constitute a danger to the public which the City deems not 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.

**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 removal of Licensee's affected installations and improvements thereon, at Licensee's sole expense. Licensee shall be entitled to retain all monies paid by the condemning authority to Licensee for Licensee's 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 court of competent jurisdiction located in Hays County, Texas.

**XIII. COVENANT RUNNING WITH LAND; WAIVER OF DEFAULT.** This 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.

ACCEPTED, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**LICENSOR: CITY OF KYLE, TEXAS**

By: \_\_\_\_\_  
Name: Scott Sellers  
Title: City Manager

**LICENSEE: \_\_\_\_\_**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE STATE OF TEXAS**           §  
**COUNTY OF HAYS**           §

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Scott Sellers, City Manager for the City of Kyle, Texas, on behalf of the City.

\_\_\_\_\_  
Notary Public - State of Texas

**THE STATE OF TEXAS**           §  
**COUNTY OF \_\_\_\_\_**           §

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of the \_\_\_\_\_, on behalf of said entity.

\_\_\_\_\_  
Notary Public - State of Texas