

ENCROACHMENT LICENSE AGREEMENT

[Property Address]

This Encroachment License Agreement ("**Agreement**") by and between the COUNTY OF FRESNO ("**County**"), a political subdivision of the State of California, and on the other [List all Property Owner/Interest Holder Names] (collectively "**Licensee**") is made effective by County and Licensee this _____ day of _____, 2020 ("**Effective Date**"). County and Licensee are sometimes collectively referred to herein as the "**Parties**" and singularly as a "**Party**."

RECITALS:

This Agreement is made and entered into with respect to the following facts and circumstances:

- A. Licensee consists of all of the owner(s) (including all joint tenants or tenants-in-common), lessee(s) or other tenant(s), trustee(s), mortgagee(s), receiver(s), and other holder(s) of a legal interest in a parcel of real property ("**Subject Property**") located at _____, California, with Assessor's Parcel Number _____ - _____ - _____.
B. Licensee represents that there are no additional owner(s) (including all joint tenants or tenants-in-common), lessee(s) or other tenant(s), trustee(s), mortgagee(s), receiver(s), and other holder(s) of a legal interest in the Subject Property.
C. The Subject Property is adjacent to a County-owned right-of-way, commonly referred to as _____ ("**Subject ROW**").
D. Licensee has constructed, maintained, or otherwise suffered a physical encroachment ("**Encroachment**") in the Subject ROW. The Encroachment is described as follows:

Exhibit A to this Agreement consists of a plan view depicting the Subject ROW and the rough location of the easement. **Exhibit B** to this Agreement consists of photographs of the Encroachment.

1 E. The Encroachment constitutes a trespass on the Subject ROW and a nuisance *per se*,
2 which the County may abate at its discretion.

3 F. The Parties understand and agree that the County has initiated an action to enforce State
4 law and the Fresno County Code of Ordinances with respect to the Encroachment ("**Code**
5 **Enforcement Action**"), which is stayed during the duration of this Agreement. The
6 Parties understand and agree that, among its remedies, the County can record on title a
7 [Notice of Violation/Notice of Pending Code Enforcement Action], which the County is not
8 prohibited from recording during the pendency of this Agreement.

9 G. Under section 1480, et seq. of the California Streets and Highways Code, the County may
10 order the removal of the Encroachment or remove the Encroachment at the sole expense
11 of Licensee.

12 H. Licensee desires to avoid the forfeiture which would result from the removal of the
13 Encroachment.

14 I. Licensee has paid to the County the license agreement preparation fee, as authorized by
15 the Board of Supervisors.

16 J. Pursuant to the authority granted by the Board of Supervisors to the Director of Public
17 Works and Planning ("**Director**"), as the County Road Commissioner, on August 18,
18 2020, the Director has the discretion to enter into agreements on behalf of the County to
19 extend a revocable license to property owners, such as Licensee, permitting the
20 maintenance of encroachments in County rights-of-way.

21 In consideration of the foregoing facts and circumstances, and for good and valuable
22 consideration, the sufficiency of which is acknowledged and as having been received, County
23 and Property Owner agree as follows:

24 **ARTICLE I**

25 **REVOCABLE LICENSE**

26 1.01 In consideration of Licensee's promises herein, County hereby gives permission,
27 revocable and terminable as provided in this Agreement, to Licensee to enter onto the
28 Subject ROW for the sole purpose of using it to maintain the existing Encroachment, on

the terms and conditions set forth in this Agreement, with which Licensee promise to comply and abide.

1.02 Licensee's permission to use the Subject ROW is not exclusive to Licensee and Licensee shall have the privilege only of occupying the portion of the Subject ROW as needed to maintain the existing Encroachment.

1.03 Other than the existing Encroachment or as otherwise allowed by law, Licensee shall not erect any permanent structures or improvements in the Subject ROW, or erect, or have erected or installed, permit to remain on the Subject ROW any temporary structures, fixtures, attachments or other things attached to or being on the premises or placed thereon by Licensee or Licensee's guests, invitees, or licensees of Licensee.

1.04 Other than maintenance of the existing Encroachment, Licensee shall not perform or permit any of Licensee's guests, invitees, or licensees to commit any disorderly conduct, nuisance, or other unlawful activity on the Subject ROW

1.05 Other than maintenance of the existing Encroachment, Licensee shall not use or permit any of Licensee's guests, invitees, or licensees to use the Subject ROW in any way so as to interfere with lawful use of the Subject ROW.

1.06 Licensee acknowledges that this Agreement constitutes a revocable license, that this Agreement does not create a lease, a right to the possession, an estate, or any other interest in any portion of the Subject ROW.

1.07 Licensee acknowledges that any expenditure of money made in reliance upon this Agreement was done at Licensee's own peril and with the full and complete understanding that the license provided by this Agreement is revocable and this Agreement is terminable by the Director.

ARTICLE II

LICENSEE'S OBLIGATION TO INDEMNIFY AND DEFEND COUNTY

2.01 Licensee hereby agrees to save, indemnify, hold harmless and, at County's request, defend County, its officers, agents, and employees, including but not limited to the Fresno County Department of Public Works and Planning, the Fresno County Board of

1 Supervisors, each member of the Fresno County Board of Supervisors (each an
2 **Indemnified Party**," and collectively, the "**Indemnified Parties**"), from and against any
3 and all expenses, demands, liabilities, claims, costs (including but not limited to court
4 costs and attorney's fees and costs, and fees and costs of any experts or consultants
5 engaged by such attorney), or damages of any nature whatsoever occurring or resulting
6 to Indemnified Parties, including, but not limited to, an award of attorney's fees and costs,
7 and fees and costs, and fees and costs of any experts or consultants engaged by such
8 attorney to the person, organization or entity bringing the cause of action, or their officers,
9 agents, and employees, arising from, resulting from, or in connection with any Indemnified
10 Parties action related to the subject matter of this Agreement or relating in any way to the
11 Encroachment.

12 2.01.1 Licensee understands and acknowledges that there shall be no limit
13 whatsoever on the amount of damages, attorneys' fees, and costs
14 (including but not limited to court costs, and fees and costs of any experts
15 or consultants engaged by such attorney) it may be required to pay to satisfy
16 its obligations under this Agreement.

17 2.01.2 Licensee's obligations under this Agreement shall apply whether or not
18 there is concurrent, active, or passive negligence, or other liability, on the
19 part of the Indemnified Parties, or any of them.

20 2.02 When defending Indemnified Parties, Licensee shall directly pay all attorneys' fees and
21 costs (including but not limited to court costs and attorney's fees and costs, and fees and
22 costs of any experts or consultants engaged by such attorney) related to the defense in
23 any action brought against any of the Indemnified Parties and/or the Licensee. Licensee
24 shall defend Indemnified Parties through legal counsel having demonstrated expertise in
25 matters that are the subject of this Agreement ("**Litigation Counsel**"), and selected by
26 Licensee, provided however, County Counsel, or County Counsel's designee, shall have
27 the right to approve the selection of Litigation Counsel, which approval shall not be
28 unreasonably withheld or delayed, and in the event of any such disapproval, County
Counsel, or County Counsel's designee, shall promptly give specific reason or reasons

therefor to Licensee. Payment of Litigation Counsel's fees and costs (including but not limited to court costs, and fees and costs of any experts or consultants engaged by such attorney) in the defense of Indemnified Parties is solely the responsibility of Licensee. However, Litigation Counsel shall work at the sole direction of the County Counsel or his or her designee.

2.03 Nothing contained herein shall prohibit County, in its sole discretion, from participating in the defense of any demand, claim, action, proceeding, or litigation over and above representation by Litigation Counsel, or from participating in the defense of any demand, claim, action, proceeding, or litigation. If County elects to also defend, it shall do so in good faith and County shall bear its attorney's fees and costs of its own legal counsel. Except as otherwise provided in this paragraph, in no event shall County's participation in the defense of any demand, claim, action, proceeding, or litigation affect the obligations imposed upon Licensee in Sections 2.01 and 2.02 of this Agreement.

2.04 At all times from the Effective Date of this Agreement until the termination of Licensee's duty to indemnify Indemnified Parties, Licensee shall maintain insurance covering the Subject Property against any injury that might be caused by the Encroachment. Such insurance shall also cover Licensee's obligation to indemnify the Indemnified Parties as required in this Article II. Licensee must at any time provide a certificate of insurance, evidencing the insurance required under this section 2.04, to County within five (5) days following notice from the County.

ARTICLE III

LICENSEE'S DUTIES TO NOTIFY UPON TRANSFER OF OWNERSHIP

3.01 For the purposes of this Agreement, "**Transfer of Ownership**" is defined as any change in ownership as that term is used in Revenue and Taxation Code sections 60 and 61. The exemptions found in section 62 of the Revenue and Taxation Code shall not apply for the purposes of this Agreement.

3.02 Irrespective of any duty which may exist under the law of the State of California, Licensee is obligated, prior to any Transfer of Ownership of the Subject Property, to notify any

1 successor in interest in writing of (a) the existence and unlawful nature of the
2 Encroachment and (b) the existence of this Agreement.

3 3.03 Within ten (10) days following a Transfer of Ownership, Licensee must notify the County
4 in writing of such Transfer of Ownership, by following the procedures provided by section
5 6.02 of this Agreement. In the notification required by this section 3.03, Licensee must
6 provide to the County all known names and contact information for any successors in
7 interest, including without limitation the phone numbers, email addresses, and mailing
8 addresses. In order for Licensee's notice to the County to satisfy this section 3.03,
9 Licensee must undertake reasonable efforts to identify the names and contact information
10 for all successors in interest, including without limitation all purchasers or other grantees
11 and any mortgagee or holder of a deed of trust.

12 ARTICLE IV

13 DEFAULT BY LICENSEE

14 4.01 Default of Licensee ("Event of Default") shall include, but not be limited to, the following
15 acts or omissions:

16 4.01.1 Licensee's breach of any term, condition, or covenant of this Agreement.
17 4.01.2 Licensee's failure to inform County of any owner(s) (including all joint
18 tenants or tenants-in-common), lessee(s) or other tenant(s), trustee(s),
19 mortgagee(s), receiver(s), and other holder(s) of a legal interest in the
20 Subject Parcel.
21 4.01.3 Other than the maintenance of the existing Encroachment, the commission
22 by Licensee or by any of Licensee's guests, invitees, or licensees of any
23 disorderly conduct, nuisance, or other unlawful activity in the Subject ROW.
24 4.01.4 Other than the maintenance of the existing Encroachment, the use by
25 Licensee or by any of Licensee's guests, invitees, or licensees of the
26 Subject ROW in any way so as to interfere with lawful use of the Subject
27 ROW.

1 4.01.5 Other than the maintenance of the existing Encroachment or as otherwise
2 allowed by law, the erection by Licensee or by any of Licensee's guests,
3 invitees, or licensees of any permanent structures or improvements in the
4 Subject ROW.

5 4.01.6 Licensee's failure to perform any obligation provided in Article II (Licensee
6 to Indemnify and Defend County) of this Agreement.

7 4.01.7 Licensee's failure to maintain insurance or provide evidence of it upon
8 demand by the County as required by section 2.04 of this Agreement.

9 4.01.8 Licensee's failure to perform any obligation provided in Article III (Licensee's
10 Duty to Notify), including without limitation any failure to notify a successor
11 in interest as provided by section 3.01 or the County as provided by section
12 3.03.

13 4.02 Upon occurrence of an Event of Default, the Director shall have the right to declare that
14 Licensee is in material breach of this Agreement, and (unless County is otherwise relieved
15 herein of the necessity of providing such notice to Licensee, in which case County shall
16 be entitled to immediately proceed in enforcing its remedies herein) deliver written notice
17 thereof to Licensee.

18 4.03 The occurrence of an Event of Default shall entitle County to all any and all remedies
19 available under this Agreement and under the law, including but not limited to, specific
20 performance and damages.

21 4.04 Moreover, and without limiting the County's remedies in section 4.03 above, the
22 occurrence of an Event of Default shall entitle the County to the following remedies:

23 4.04.1 The County may immediately initiate or resume any and all appropriate
24 Code Enforcement Action.

25 4.04.2 The Director may order the removal of the Encroachment or may remove
26 the Encroachment at Licensee's sole expense pursuant to section 1480, et
27 seq. of the California Streets and Highways Code.

28

1 4.05 All Parties comprising the Licensee are jointly and severally liable for all of the obligations
2 of Licensee under this Agreement.

3 **ARTICLE V**

4 **TERMINATION OF AGREEMENT**

5 5.01 This Agreement, aside from the provisions of Article II (Licensee to Indemnify and Defend
6 County), terminates immediately upon notice to Licensee from the Director that the
7 County revokes to Licensee's right to enter onto the Subject ROW for the purpose of
8 using it to maintain the existing Encroachment.

9 5.02 This Agreement, aside from the provisions of Article II (Licensee to Indemnify and Defend
10 County), terminates immediately upon Licensee's notice to the County pursuant to section
11 3.03 of this Agreement of a Transfer of Ownership of the Subject Property by Licensee,
12 which Transfer of Ownership results in the dispossessment by Licensee of the Subject
13 Property. This Agreement does not terminate if any Party comprising the Licensee is not
14 dispossessed of the Subject Property by such Transfer of Ownership.

15 5.03 If Licensee fails to provide notice to a successor in interest as required by section 3.01,
16 the provisions of Article II (Licensee to Indemnify and Defend County) shall continue in
17 full force and effect until such time as the County and successors in interest execute a
18 license agreement to replace this Agreement, the Encroachment is removed, or Licensee
19 complies with the terms of section 3.01 of this Agreement by notifying Licensee's
20 successors in interest of (a) the existence and unlawful nature of the Encroachment and
21 (b) the existence of this Agreement.

22 5.04 Notwithstanding the foregoing, Article II (Licensee to Indemnify and Defend County) shall
23 also survive termination of this Agreement as to any claim or action or any alleged injury,
24 which falls within the scope of Licensee's duty to defend and indemnify the Indemnified
25 Parties. In the event of notice of termination by the Director, Article II (Licensee to
26 Indemnify and Defend County) shall survive as to any claim or action which is alleged to
27 have accrued prior to a Director's notice of revocation. In the event of a Transfer of
28 Ownership, Article II (Licensee to Indemnify and Defend County) shall survive as to any

1 claim or action which is alleged to have occurred prior to the Transfer of Ownership or
2 Licensee's notification of successors in interest (whichever occurs later).

3 **ARTICLE VIII**

4 **MISCELLANEOUS PROVISIONS**

5 6.01 **Public Record.** The Parties agree that this Agreement, including its contents, is a publicly
6 disclosable public record under the California Public Records Act (Government Code
7 Section 6250, *et seq.*), the Ralph M. Brown Act (Government Code Section 54950, *et
seq.*), and all other applicable laws pertaining to disclosure by public entities. County is
9 not limited in any manner whatsoever with respect to public disclosure of this Agreement,
10 in whole or in part.

11 6.02 **Notice.** All notices, consents, approvals, requests, correspondence, documents, reports,
12 demands and other communications (collectively, "Notice") which the Parties are required
13 or desire to serve upon or deliver to one another shall be in writing and shall be sent by
14 any of the following methods: (a) personal delivery, in which case notice is effective upon
15 delivery; (b) certified or registered United States mail, return receipt requested, in which
16 case notice shall be deemed delivered upon receipt if delivery is confirmed by a return
17 receipt; or (c) nationally recognized overnight courier, with charges prepaid or charged to
18 the sender's account, in which case notice is effective on delivery if delivery is confirmed
19 by the delivery service addressed in the appropriate manner for the method of service, as
20 set forth below:

21 **To Licensee:**

22 [Name]
23 [Title]
24 [Address Line 1]
25 [Address Line 2]

26 **To County:**

27 Director
28 Department of Public Works and
Planning
County of Fresno
2220 Tulare Avenue, Sixth Floor
Fresno, CA 93721

29 [Name]
30 [Title]
31 [Address Line 1]
32 [Address Line 2]

1 6.03 **Government Claims.** For all claims arising from or related to this Agreement, nothing in
2 this Agreement establishes, waives, or modifies any claims presentation requirements or
3 procedures provided by law, including the Government Claims Act (Division 3.6 of Title 1
4 of the Government Code, beginning with section 810).

5 6.04 **Complete Agreement.** This Agreement represents the full and complete understanding
6 of the parties with respect to the subject matter hereof, and all preliminary negotiations
7 and oral or written agreements with respect thereto are merged herein. No verbal
8 agreement or implied covenant shall be held to vary the provisions hereof. Any
9 modification of this Agreement will be effective only by a written instrument signed by both
10 County and Licensee. No waiver of any provision of this Agreement will be valid unless
11 and until it is in writing and signed by the Party making the waiver. Waiver by either Party
12 at any time of a breach or default of this Agreement shall not be deemed a waiver of or
13 consent to a breach or default of the same or any other provision of this Agreement.

14 6.05 **Severability.** If any provision of this Agreement is determined to be illegal, invalid, void,
15 or unenforceable in a final judgment by a court of competent jurisdiction, each and every
16 other provision hereof shall remain in full force and effect, unless this severability
17 provision would deny one or more of the parties to the Agreement of the material benefits
18 of the Agreement, in which case the entire Agreement shall have no force and effect.

19 6.06 **Authority to Execute.** Each Party represents and warrants to the other Party that such
20 Party is duly authorized and empowered to execute, enter into, and perform its obligations
21 set forth in this Agreement, and that the individual signing this Agreement on behalf of
22 such Party has been duly authorized to execute this Agreement on behalf of such Party,
23 and will, by signing this Agreement on such Party's behalf, legally bind such Party to the
24 terms, covenants, and conditions of this Agreement. Each Party further represents and
25 warrants to the other Party that no other person or entity is required to give its approval
26 or consent to this Agreement in order for such Party to authorize, enter into, and perform
27 its obligations under this Agreement, or that if such approval or consent to this Agreement
28 is required, that such approval or consent has been obtained.

6.07 **Applicable Law.** This Agreement is made and entered into in the State of California and shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be governed by, and construed, and enforced in accordance with the laws of the State of California. Any suits brought pursuant to this Agreement shall be filed and heard in courts having jurisdiction and located in the County of Fresno, State of California.

6.08 **Non-Assignment.** Neither Party shall assign, transfer or sub-contract this Agreement nor their rights or obligations under this Agreement without the prior written consent of the other Party.

6.09 **Third-Party Beneficiaries.** Notwithstanding anything else to the contrary herein, the Parties acknowledge and agree that no other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of this Agreement.

6.10 **Independent Capacity.** The Parties agree that Licensee, its agents, officers, and employees act in an independent capacity from County, and not as agents of County.

6.11 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument.

[Signature page follows.]

1 The Parties hereto have executed this Agreement as of the date stated above.

2 **LICENSEE:**

3 By: _____

5 Print Name: _____

6 Title: _____

2 **COUNTY:**

3 **COUNTY OF FRESNO**, a political
4 subdivision of the State of California

5 Steven E. White, Director of Public Works and
6 Planning

7 **LICENSEE:**

9 By: _____

10 Print Name: _____

11 Title: _____

12 **LICENSEE:**

14 By: _____

15 Print Name: _____

16 Title: _____

17 **LICENSEE:**

19 By: _____

20 Print Name: _____

21 Title: _____