

RESOLUTION NO. R-2019-122

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS AUTHORIZING A LICENSE TO ENCROACH AGREEMENT WITH TDS SOLUTIONS, LLC TO ERECT A SIGN FOR STEM & STONE RESTAURANT IN A PUBLIC UTILITY EASEMENT, AS ATTACHED AS EXHIBIT A; AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS; PROVIDING FOR A REPEALING CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop City Council understands the benefit of having viable, on-going commercial enterprises operating in Downtown; and

WHEREAS, the City of Bastrop City Council understands particularly within the downtown area that sales tax revenue provides a direct, financial benefit to City; and

WHEREAS, the City of Bastrop understands such commercial activities attract visitors and shoppers to the downtown area, thereby increasing commerce overall; and

WHEREAS, the City of Bastrop City Council has unequivocally committed to fiscal sustainability, responsibly managing growth, and taking definitive action towards lasting solutions.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1. The City Manager is hereby authorized to execute a License to Encroach Agreement between the City of Bastrop and TDS Solutions LLC to erect a sign for Stem & Stone Restaurant in a public utility easement (attached as Exhibit A) as well as all other necessary documents.

Section 2. All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

Section 3. This resolution shall take effect immediately from and after its passage, and it is duly resolved.

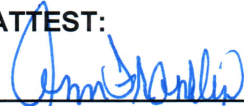
DULY RESOLVED AND ADOPTED by the City Council of the City of Bastrop, Texas this 26th day of November 2019.

APPROVED:



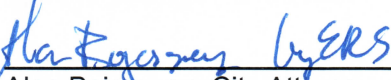
Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

LICENSE TO ENCROACH AGREEMENT

This is a license agreement for the use of a Public Utility Easement P.U.E. along Chestnut Street also known as 1507 Chestnut Street for the installation of a monument sign between the City of Bastrop, acting by and through its City Manager (hereinafter "City") and TDS Solutions LLC, acting by and through its president Miguel Cardoza (hereinafter "Licensee"). Either may herein be referred to individually as "Party"; collectively, City and Licensee will be referred to as the "Parties."

RECITALS

The Parties acknowledge and agree on the following:

1. City shall maintain the use of the public utility easement of certain real property as shown on Exhibit A ("the Property").
2. The Property is located immediately in front of a building in which Licensee conducts commercial activities.
3. It is in the best interests of City and the public to have viable, on-going commercial enterprises operated in its downtown, not only because of sales tax revenue that provides a direct, financial benefit to City, but also because such commercial activities attract visitors and shoppers to the downtown area, thereby increasing commerce overall.
4. The benefits to be derived by City and the public from this Agreement far outweigh the negligible negative impact this Agreement will have on the public's use of City's public utility easement in which the monument sign is located.
5. This Agreement is supported by full and adequate consideration.

TERMS OF THE AGREEMENT

In consideration of the recitals and mutual covenants and agreements contained in this Agreement, the Parties agree to the following terms:

ARTICLE 1

PREMISES AND PRIVILEGES

For and in consideration of the terms, conditions and covenants of this Agreement to be performed by Licensee, all of which Licensee accepts, City authorizes and permits Licensee to have the non-exclusive use of the Public Utility Easement for the installation of a monument sign. The herein described privileges are non-transferable and shall not convey with the sale of the property for the term of the agreement described in Article 2. Licensee accepts the condition of the Property as is, where is, in its condition as of the effective date of this Agreement with no expectation that City will incur any expense in connection with the Property, including expenses for the repair of the Property necessitated by any damage that might occur to the Property under the use and scope of this Agreement by Licensee for commercial enterprises.



ARTICLE 2

TERM

The term of this Agreement shall be for a period of one (1) year, beginning on the effective date of this Agreement. Unless and until the Agreement is terminated, this Agreement will renew itself automatically on each anniversary of the Agreement for an additional one (1) year term.

ARTICLE 3

OBLIGATIONS OF LICENSEE

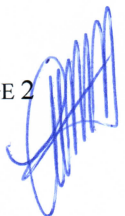
In addition to any other obligations imposed by this Agreement, Licensee accepts and will perform the following obligations:

1. Licensee shall not deny access to utilities granted permission by law.
2. Licensee shall neither construct nor permit any buildings or structures located on the Property without the written approval of the City of Bastrop.
3. Licensee shall maintain the Property and keep it clear of trash and other debris.
4. Licensee shall not use the Property for storage.
5. Licensee agrees to remove all other obstructions out of the Right of Way.
6. Licensee agrees all future work within the right of way will require a request in writing by Licensee answered with written approval by the City Manager.
7. Licensee acknowledges that City may desire to install, repair, remove, or otherwise improve utility services within the public utility easement. In this event, Licensee shall remove any signage on the Property for such amount of time as is necessary for the City to perform such repairs, or improvements. The City also retains the right to access the property for all other rights incidental to and necessary in connection with any utility lines or facilities which may be located on or under the Property. The City will perform all ordinary maintenance related to the Property, and it shall be noted that the following improvements are located within the City's P.U.E. of the Property:
 - Monument sign

ARTICLE 4

NOT A CONVEYANCE OF REAL PROPERTY INTEREST

The Parties agree and acknowledge that this Agreement is not a conveyance or transfer of any tenancy, leasehold or ownership interest of any kind in the Property or the public utility easement.



ARTICLE 5

NO LIABILITY FOR CITY

The Parties agree that the City shall have no liability for any losses or damages, neither direct nor consequential, resulting from the loss of any things on the Property, real or personal, whether by theft, vandalism, negligence, act of God, or other event or occurrence.

ARTICLE 6

NO ASSIGNMENT

Licensee shall not assign this Agreement without the prior written consent of the City.

ARTICLE 7

TERMINATION

This Agreement shall terminate upon the occurrence of any of the following:

1. Either the City or the Licensee may terminate this Agreement without cause by submitting 30 (thirty) days written notice of such to the other Party.
2. Licensee defaults in the performance of its obligations under this Agreement, if such default continues for a period of ten (10) days after written notice to Licensee by the City of the default.

Upon termination of this Agreement, Licensee shall remove all things placed within the Right of Way by Licensee or its agents, servants or employees. Licensee shall restore the right of way as nearly as practical to its condition prior to the initial execution of this Agreement.

The failure of the City to declare this Agreement in default shall not operate to bar or waive the right of the City to terminate this Agreement because of any subsequent violation of the Agreement.

ARTICLE 8

MISCELLANEOUS GENERAL PROVISIONS

1. Attorney's Fees. In any action brought for the enforcement of the obligations in this Agreement, the prevailing party shall be entitled to recover interest and reasonable attorney's fees.
2. Misrepresentation. All terms and conditions with respect to this Agreement are expressly contained in this document. Licensee agrees that no representative or agent of the City has made any representation or promise with respect to this Agreement not expressly contained in the Agreement.
3. Paragraph Headings. The paragraph headings are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.
4. Notices. Notices that are sent pursuant to any provision of this Agreement, at a minimum, shall be sent to the following:

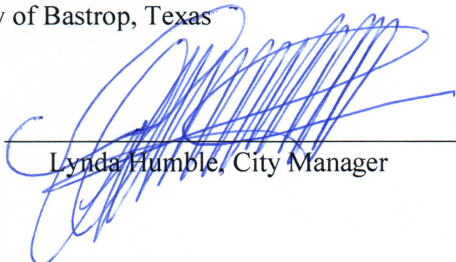
5. Choice of Law and Venue. This Agreement is made and entered into by the Parties in the City of Bastrop, Bastrop County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas and the venue of any suits arising from this Agreement shall be Bastrop County, Texas.
6. Entire Agreement Amendment: This Agreement including any exhibits constitutes the full and entire understanding and agreement between the Parties and supersedes any prior or contemporaneous written or oral agreements between the Parties. This Agreement may not be amended except by a written instrument agreed to and signed by both Parties.
7. Rights and Remedies Cumulative: The rights and remedies provided by this Agreement are cumulative; and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. The rights and remedies provided in this Agreement are given in addition to any other rights the Parties may have by law, statute, ordinance, or otherwise.
8. Agreement Approval: Each Party represents and warrants that all necessary approvals for this Agreement have been obtained, and the persons whose signatures appear below have the authority necessary to execute this Agreement on behalf of the Parties indicated.
9. Originals: This Agreement may be executed in multiple or duplicate originals. A duplicate original or copy of this Agreement is as fully enforceable as an Original, whether the document is a “hard copy” or an electronic copy. This Agreement may be signed and a .pdf copy of the document transmitted electronically which shall then constitute an original signature on the document.
10. Effective Date: This Agreement shall become effective and enforceable upon the date on which both Parties signatures are collected and so attested.

SIGNATURE PAGE TO FOLLOW.

A handwritten signature in blue ink, consisting of several overlapping loops and lines, located in the bottom right corner of the page.

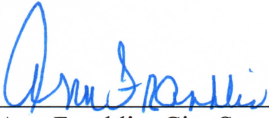
AGREED:

City of Bastrop, Texas

By:  _____
Lynda Humble, City Manager

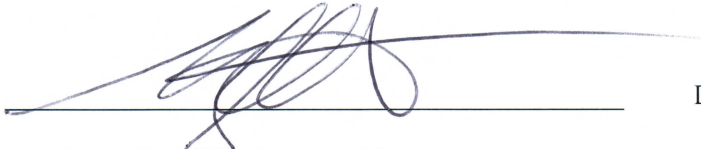
Date Signed: 12-9-19

ATTEST:



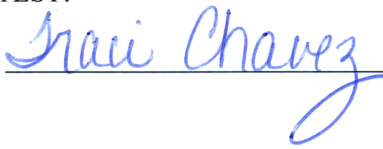
Ann Franklin, City Secretary for Bastrop, Texas

AGREED:

By:  _____
Title: Miguel Cardoza, President

Date Signed: 12/13/2019

ATTEST:

By:  _____

Date Signed: 12/13/2019