

RESOLUTION NO. R-2024-06

A RESOLUTION OF THE CITY OF BASTROP, TEXAS, APPROVING A LICENSE TO ENCROACH AGREEMENT ON A PUBLIC UTILITY EASEMENT LOCATED ADJACENT TO 1615 CEDAR STREET, ALSO KNOWN AS ZAVODNY FOOD COURT; AUTHORIZING EXECUTION OF ALL NECESSARY DOCUMENTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bastrop, Texas ("City") is a Home-Rule City acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the City Council understands the benefit of allowing certain encroachments on to a Public Utility Easement for the operation of businesses within the City; and

WHEREAS, Curtis Zavodny ("Licensee") seeks to encroach on a portion of a Public Utility Easement; and

WHEREAS, The encroachment is located adjacent to the parcel on which Licensee conducts activities; and

WHEREAS, The City Staff has reviewed the request and License to Encroach Agreement and finds it to be justifiable based upon the use of this Property; and

WHEREAS, The City finds that the allowed encroachments under this Agreement will have negligible negative impacts on the public's use of the Public Utility Easement; and

WHEREAS, It is in the best interests of City and the utility to have access to the existing and future infrastructure while allowing for encroachment of private property into the Public Utility Easement; and

WHEREAS, City Council finds that it is necessary and proper to enact this Resolution.

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

Section 1. All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Bastrop, Texas, and are hereby approved and incorporated into the body of this Resolution as if copied in their entirety.

- Section 2.** The City Council authorizes the execution of the License to Encroach Agreement, which is attached and incorporated herein as Exhibit A.
- Section 3.** Should any portion or part of this Resolution be held for any reason invalid or unenforceable by a court of competent jurisdiction, the same shall not be construed to affect any other valid portion hereof, but all valid portions hereof shall remain in full force and effect.
- Section 4.** This Resolution shall be in full force and effect from and after its passage.
- Section 5.** The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Resolution was adopted was posted and that such meeting was open to the public as required by law at all times during which this Resolution and the subject matter hereof were discussed, considered, and formally acted upon, all as required by the Texas Open Meetings Act, Chapter 551, Texas Government Code, as amended.


RESOLVED this, the 14th day of May 2024.

THE CITY OF BASTROP, TEXAS:



Lyle Nelson, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

EXHIBIT A

License to Encroach Agreement

LICENSE TO ENCROACH AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF BASTROP §

This is a License Agreement between the City of Bastrop, acting by and through the City Manager (hereinafter "City") and Curtis Zavodny (hereinafter "Licensee") for the use of a certain Public Utility Easement located adjacent to 1615 Cedar Street, Bastrop, TX, also known as Zavodny Food Court (hereinafter "Agreement"), with such encroachments into the Public Utility Easement being described and depicted in this Agreement. Collectively, City and Licensee will be referred to as the "Parties."

RECITALS

The Parties acknowledge and agree on the following:

1. The property where the Zavodny Food Court and where the Public Utility Easement is located is shown on Exhibit A (hereinafter "Property"), which is attached and incorporated herein.
2. The encroachment in the Public Utility Easement is located adjacent to the parcel on which Licensee conducts activities which is shown more accurately on Exhibit B, which is attached and incorporated herein.
3. It is in the best interests of City and Utility Providers to have access to the existing and future infrastructure while allowing for encroachment of private property into the public utility easement.
4. The City finds that this Agreement will have negligible negative impacts on the public's use of the Public Utility Easement for the allowed encroachments.
5. This Agreement is supported by full and adequate consideration.

TERMS OF THE AGREEMENT

In consideration of the recitals and mutual covenants 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 encroachment as shown in Exhibit B. The herein described privileges are transferable and shall 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, and 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.

ARTICLE 2

TERM

The term of this Agreement shall be for a period of one 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-year term.

- A. The City may terminate this agreement without cause. The City shall give written notice of the termination of the Agreement to Licensee in accordance with Article 7 below, which termination shall become effective on the date specified in the written notice.

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 utility or telecommunication providers.
2. Licensee shall neither construct nor permit any buildings, structures, or improvements other than those listed in this Agreement without approval of the City of Bastrop in writing.
3. Licensee shall maintain and upkeep the Property, including that infrastructure that is encroaching in the Public Utility Easement, or remove those encroaching items if the items are not maintained or kept in good working order.
4. Licensee agrees all future work within the public utility easement will require a request through the permit process and approval by the City Manager
5. Licensee acknowledges that City may desire to repair, repave, or otherwise improve the public utility easement. In this event, Licensee shall allow the City access for such period of time as is necessary. 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 that may be located on or under the Property.

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 Public Utility Easement.

ARTICLE 5

NO LIABILITY FOR CITY

The Parties agree that City shall have no liability for any losses or damages, direct or consequential, resulting from the loss of anything on the Property, real or personal, whether by theft, vandalism, negligence, act of God, or some 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 City of the default.

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

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

ARTICLE 8

MISCELLANEOUS GENERAL PROVISIONS

- A. 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.
- B. 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.
- C. 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.
- D. Notices. Notices that are sent pursuant to any provision of this Agreement, at a minimum, shall be sent to the following:

City:

The City of Bastrop
ATTN: City Secretary
1311 Chestnut Street
Bastrop, TX 78602

Licensee:

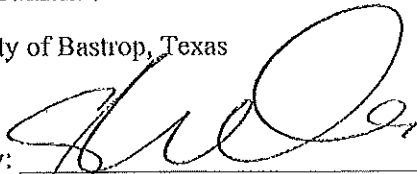
Zavodny Food Court
1615 Cedar Street
Bastrop, TX 78602

- E. Choice of Law and Venue. This Agreement is made and entered into by the Parties in Bastrop, Bastrop County, Texas, and is intended to be performed in Bastrop. 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.
- F. Entire Agreement Amendment: This Agreement including all 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 signed by both Parties.
- G. 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.
- H. 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.
- I. 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 "hard copy" or electronic. This Agreement may be signed and a pdf copy of the document transmitted electronically which shall then constitute an original signature on the document.
- J. Effective Date: The effective date of this Agreement shall be on the date last signed by a Party.

[SIGNATURE PAGE TO FOLLOW.]

AGREED:

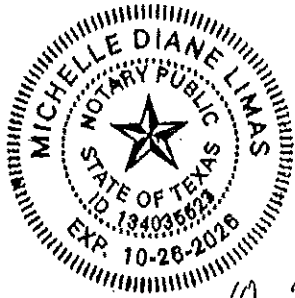
City of Bastrop, Texas


By: 
Sylvia Carrillo, City Manager

Date: 5/22/24

THE STATE OF TEXAS §
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COUNTY OF BASTROP §

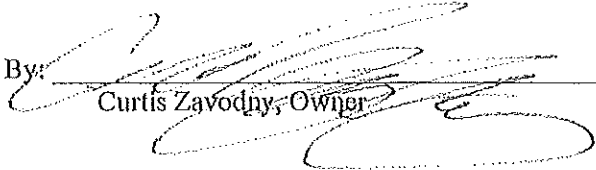
This instrument was acknowledged before me on this the 22 day of May, 2024, by Sylvia Carrillo, the City Manager and the duly authorized representative of the City of Bastrop.




Notary Public, State of Texas

My Commission Expires: 10-26-26

AGREED:

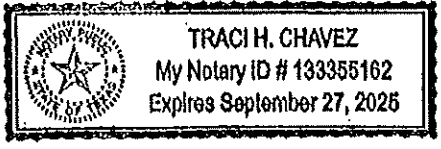
By: 
Curtis Zavodny, Owner

Date: 5/21/24

THE STATE OF TEXAS §
 §
COUNTY OF BASTROP §

This instrument was acknowledged before me on this the 21st day of MAY, 2024, by Curtis Zavodny, the OWNER and the duly authorized representative of the City of Bastrop.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 21st day of MAY, 2024



Traci H. Chavez
Notary Public, State of Texas

My Commission Expires: 9-27-25

LAND DEVELOPMENT		SUBDIVISIONS		UTILITIES	
#	DATE	#	DATE	#	DATE
SHEET 09 OF 25					
SITE PLAN				PROJECT NO. 08-00000000 SHEET TITLE:	
CITY OF BASTROP SITE DEVELOPMENT PLAN 240000000000000000 1615 CEDAR STREET BASTROP, TX 78602					
HIGHLAND DEVELOPMENT & ENGINEERING CO., LLC 111 N. HASLER BLVD., BASTROP, TX 78602 (935) 974-9945 TYPE FIRM NO. 19495		INTERIM SEAL THIS DOCUMENT IS RELEASED FOR THE PURPOSE OF INTERIM REVIEW UNDER THE AUTHORITY OF RACHEL D. HARTZLER, P.E. 1703 N. W. 110 TH STREET IT IS NOT TO BE USED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES		PAGE C-1 SHEET	

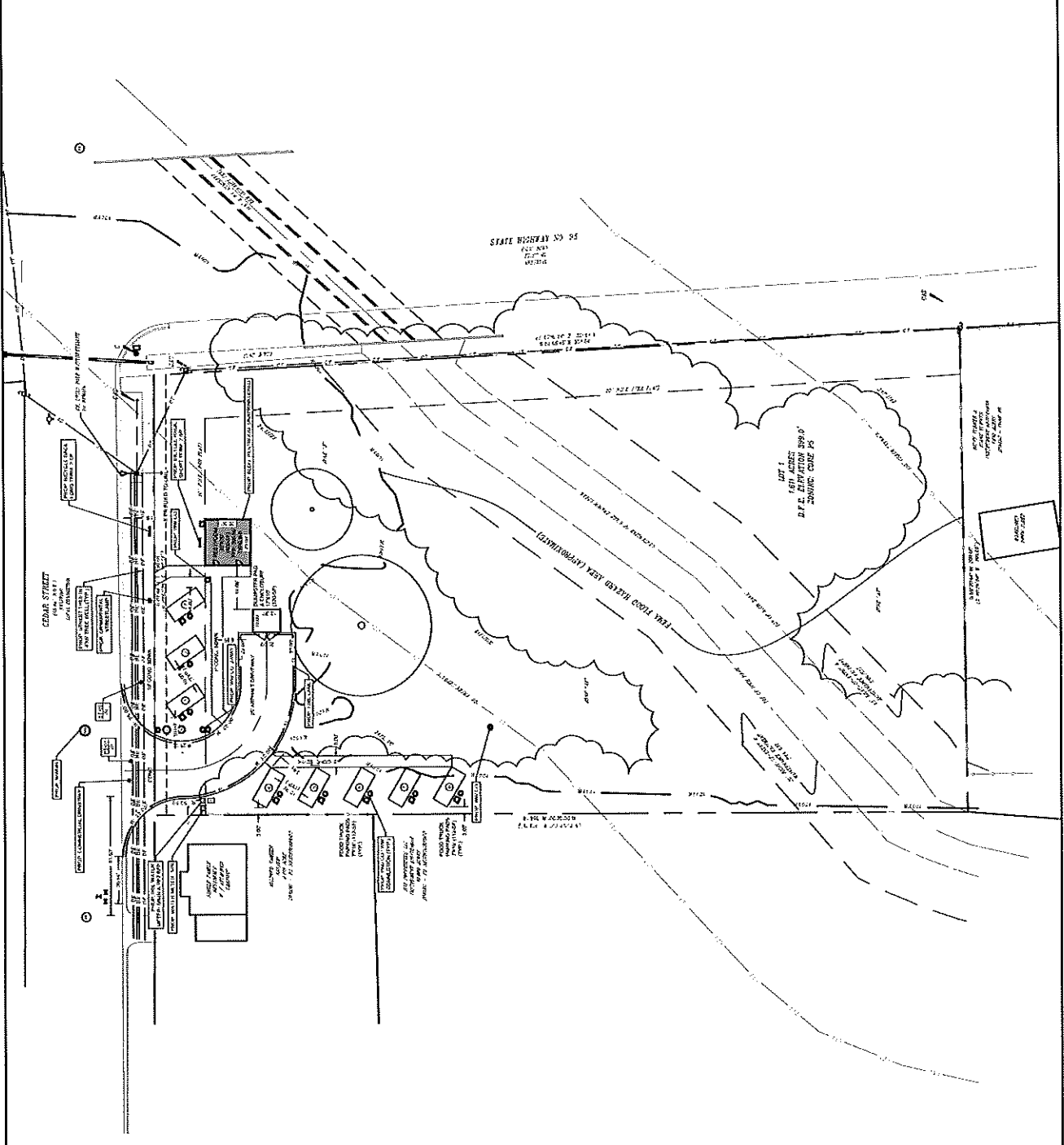
TABLE SITE DATA SUMMARY

EXISTING PLANT TYPE ZONING	PT / COPT
PROPOSED BUILDING TYPE	COMMERCIAL (PRIVATE BUSINESS)
LOT AREA (AC. +/-)	2.82 (AC. TO 1/4" = 1"
PERCENTAGE OF LOT COVERED	100%
PERCENTAGE OF OPEN SPACE	100% (WITH 1/4" = 1"
ADDITIONAL DATA	

EMERGENCY SERVICES LINES/TYPES

BOUNDARY & ROAD LINES/TYPES

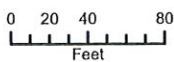
CENTERLINE: _____
 CONTROLLED ACCESS ROW: _____
 UNPAVED ACCESS ROW: _____
 CURB: _____
 PROPERTY LINE: _____
 EASEMENT LINE: _____
 EDGE OF PAVEMENT (EOP): _____
 CURB & GUTTER: _____



Attachment 1 Location Map



Location Map 1615 Chambers Street



1 inch = 100 feet

Date: 4/29/2024

The accuracy and precision of this cartographic data is limited and should be used for information/planning purposes only. This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an "official" verification of zoning, land use classification, or other classification set forth in local, state, or federal regulatory processes. The City of Bastrop, nor any of its employees, do not make any warranty of merchantability and fitness for particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness or usefulness of any such information, nor does it represent that its use would not infringe upon privately owned rights.

