

RESOLUTION R24-36

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALOS VERDES ESTATES, CALIFORNIA, AUTHORIZING THE APPROVAL OF AN ENCROACHMENT LICENSE AGREEMENT TEMPLATE AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL FUTURE LICENSE AGREEMENTS.

WHEREAS, under Palos Verdes Estates Municipal Code (PVEMC) Chapter 12.04, encroachments are categorized into standard and nonstandard, each requiring different application and review processes; and

WHEREAS, PVEMC section 12.04.090 requires Planning Commission approval for a nonstandard encroachment permit, necessitating a Miscellaneous Application for an Encroachment in the Right-of-Way; and

WHEREAS, the Public Works Department, as a condition for approving nonstandard encroachments, mandates a license agreement between the City and the property owner to maintain and repair the improvements, cover costs incurred by the City related to the encroachment, maintain commercial general liability insurance, and indemnify the City; and

WHEREAS, the approved license agreement, subject to a fee of \$1,360, is required to be presented to the City Council for approval and recorded with the Los Angeles County Recorder's Office; and

WHEREAS, at the City Council meeting on May 28, 2024, the Council discussed nonstandard encroachment requests and directed staff to present a license agreement template for approval, enabling the City Manager to execute all future license agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALOS VERDES ESTATES AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The City Council approves the license agreement template attached hereto as Attachment A. The City Council authorizes any necessary edits to the license agreement template as determined by the City Attorney's Office and/or City staff.

SECTION 3. The City Manager or his or her designee is hereby authorized to execute all future license agreements that conform to the approved license agreement template without further City Council approval.

SECTION 4. The City Council finds that the fee of \$1,360 for the current license agreement process is the correct amount for the new license agreement process, whether or not it comes before the City Council for approval. The same staff time will be involved in all license agreements and

the fee is the actual cost incurred in providing such services. The City Council directs City staff to review the fee cost by the end of calendar year 2024 in order to determine if any adjustments to the fee schedule are necessary and appropriate based on the new license agreement process.

SECTION 5. The City Council finds this Resolution is not subject to the California Environmental Quality Act (CEQA) in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty, as in this case, that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 6. Severability. If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end, the provisions of this Resolution are declared to be severable.

SECTION 7. Effective Date. This Resolution shall become effective immediately.

The foregoing Resolution was adopted at a regular meeting of the City Council of the City of Palos Verdes Estates, California held on the 9th day of July, 2024, by the following vote:

AYES: Murduck, Lozzi, McGowan, Kemps, Roos

NOES:

ABSENT:

ABSTAIN:

CITY OF PALOS VERDES ESTATES



Dawn Murdock, Mayor

APPROVED AS TO FORM:



Trevor Rusin, City Attorney

ATTEST:



Interim City Clerk

RESOLUTION R24-36 ATTACHMENT A

LICENSE AGREEMENT

This License Agreement for use of real property (“License” or “Agreement”) is made by and between the CITY OF PALOS VERDES ESTATES, a general law city and municipal corporation (City) and NAME (Licensee).

RECITALS

A. Licensee is the owner of certain real property commonly referred to as _____, Palos Verdes Estates, California, and being more particularly described as Lot ___ of Tract _____ in the County of Los Angeles, State of California (the Residence).

B. Pursuant to the terms and conditions of this License, City desires to permit Licensee to enter on to the public right-of-way to allow one nonstandard walkway within the City right-of-way for the benefit of the Residence in the location shown on Exhibit A attached hereto.

NOW, THEREFORE, in consideration of the mutual covenants and provisions set forth herein, the parties agree as follows:

1. Grant of License. City hereby grants to Licensee a revocable, nonexclusive License authorizing the use of a portion of the above-described right-of-way solely for the purposes, and at such times and in such manner, as set forth in this Agreement. This License is also expressly subject to and conditioned upon all conditions imposed on the proposed project by Planning Commission Resolution No. PCR-____ - ____, adopted on _____ shown on Exhibit B attached hereto and incorporated by this reference.

2. Term. The term of this Agreement shall be ongoing, unless sooner revoked or terminated in accordance with this Agreement.

3. Purpose of License Agreement. The purpose of this Agreement is to allow Licensee to construct one nonstandard walkway within the public right-of-way for the purpose of access to the subject site.

4. Termination/Revocation. Licensee expressly agrees and acknowledges that the grant of this License for use of the public right-of-way is revocable pursuant to the terms of this Agreement and vests no permanent right in the Licensee. The City may revoke the license at any time and for any reason in its sole discretion upon 120 days’ notice to Licensee prior to revocation. Without limiting the foregoing, the License is subject to immediate revocation (1) in the event of a violation of any of the terms or conditions of this Agreement; (2) in the event the use becomes, for any reason, dangerous to any structure, dangerous to passing motorists or pedestrians, or the use becomes insecure or unsafe; (3) in the event that the improvements are not maintained in a clean and safe condition in accordance with this Agreement and all applicable laws, codes, and regulations; (4) in the event that a successor-in-interest to Licensee refuses or fails to execute an agreement indicating an intent to be fully bound by the terms

of this Agreement; or (5) upon judgment by a court of competent jurisdiction that any provision of this Agreement is in violation of any declaration of covenants, conditions or restrictions, or any deed restriction relevant to the right-of-way, or that this License may impair in any manner whatsoever City's interest in the right-of-way.

5. Maintenance/Restoration. Licensee shall promptly make any repairs to the Improvements that are necessary to maintain compliance with the terms of this Agreement and any other applicable permit, ordinance, code or regulation. In the event this License is terminated, Licensee shall have 120 days to remove the Improvements and fully restore the City right-of-way to its original state prior to construction of the Improvements to the satisfaction of the City's Public Works Director (such satisfaction not to be unreasonably withheld).

In the event Licensee fails to remove the Improvements in a timely manner, the City will sustain damage. Since it is and will be impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay, it is therefore agreed that the Licensee will pay to the City liquidated damages of \$100 per calendar day beyond the time prescribed above to remove the Improvements and restore the City right-of-way not as a penalty, but as a predetermined liquidated damage. The City, in its sole discretion, may also remove the Improvements and recover from Licensee all fees, costs, and expenses (including, but not limited to, attorney fees, consultant fees, contractor fees, material costs, staff time, and collection costs incurred) associated with the City's removal of the Improvements and restoration of the right-of-way to its original state prior to construction of the Improvements.

6. Repair and Maintenance. Licensee agrees to repair and maintain the Improvements at its sole and exclusive cost and expense and shall keep the Improvements maintained in a neat, clean, sanitary, and well-maintained manner consistent with the purpose of this Agreement. Licensee shall permit no waste, damage or injury to the Improvements and shall remove any graffiti from the Improvements within 48 hours of its discovery or within 48 hours of being directed to do so by City. Licensee understands and agrees that City shall have no responsibility for such repair or maintenance regardless of the cause therefore, including, but not limited to damage to the Improvements caused by the negligence or intentional action of any member of the public otherwise using the right-of-way. In the event the City must make improvements to or remove and replace the right-of-way, the City shall have no responsibility in replacing the Improvements requested by the Licensee.

7. Insurance. Licensee agrees to maintain in full force and effect commercial general liability insurance coverage acceptable to City for the purpose of covering potential claims for bodily injury, death or disability and for property damage which may arise from or in connection with this Agreement and/or the Improvements contemplated herein. The insurance policy shall provide coverage limits of no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. A copy of the policy shall be provided to the City prior to commencement of any construction activity relating to the Improvements. The policy shall name the City as additional insured and shall be primary as to any other insurance available to City. The policy shall include a clause ensuring that the City will be provided at least 30 days' notice prior to the cancellation or reduction of the insurance protection. Failure to maintain such insurance

constitutes a material breach of this License and the City may (i) immediately revoke this License pursuant to Section 4 and (ii) pay the costs of such insurance and recover its costs from Licensee.

8. Compliance with Applicable Laws. At all times during the term of this Agreement, Licensee will comply with any and all applicable federal, state and local laws, rules and regulations, and shall obtain any and all permits required for the construction of the Improvements contemplated herein.

9. Indemnification and Hold Harmless. Licensee, and each of them, agrees to indemnify, defend with counsel approved by the City, and hold harmless City, and City's officers, officials, agents, employees and volunteers, from and against any liability, claim, or damages, including, without limitation, attorney's fees and costs of suit, arising from Licensee's exercise of the rights granted under this License or resulting directly or indirectly from any operations or activities conducted in or around the right-of-way, except for injuries and damages caused by the sole active negligence or willful misconduct of the City. Such indemnification and defense shall include, but not be limited to, claims for damage suffered by any member of the public using the right-of-way which is allegedly caused by activities undertaken by Licensee pursuant to this Agreement or by the Improvements or any portion thereof.

10. No Partnership. It is understood and agreed that nothing contained in this Agreement shall be considered as in any way constituting or creating a partnership between the City and Licensee.

11. Successors and Assigns/Recordation. This License and each and every term and condition hereof shall be binding upon and shall inure to the benefit of the parties hereto and their successors in interest to the Right-of-Way. Licensee shall be solely responsible for notifying any successor-in-interest and providing such successor with a copy of this Agreement. Any successor-in-interest to Licensee must execute a copy of this Agreement upon demand by City. Licensee shall notify City at least 30 days in advance of any sale or transfer of full or partial title to the real property. City and Licensee consent to the recordation of this Agreement with the Los Angeles County Recorder's Office.

12. Notices. All notices hereunder may be hand-delivered or mailed. If mailed, notices shall be sent via certified or registered mail. Notices sent by U.S. mail shall be deemed to have been given upon placement in the U.S. Mail, postage pre-paid, and addressed as follows:

To City: City of Palos Verdes Estates
 Attn: City Manager
 340 Palos Verdes Drive West
 Palos Verdes Estates, CA 90274

To Licensee or his/her/their successors in interest:

Name
Street Address
Palos Verdes Estates, CA 90274

13. Governing Law/Venue. This License is made and is to be performed in the State of California and shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California. Exclusive venue for all disputes under this Agreement shall be the Superior Court for the County of Los Angeles.

14. Attorneys' Fees. In the event that either party hereto brings any action or files any proceeding in connection with the enforcement of its respective rights under this License or as a consequence of any breach by the other party of its obligations hereunder, the prevailing party in such action or proceeding shall be entitled to recover its reasonable attorneys' fees and costs from the losing party.

15. Exhibits. Each exhibit referred to herein is incorporated herein by this reference as if fully set forth at length herein.

16. Entire Agreement/Modification. This Agreement sets forth the complete understanding of the Parties and supersedes all prior, contemporaneous communications, understandings, promises and agreements, either oral or written. This Agreement may not be modified except by written instrument signed by the Parties.

17. Severability. If any term or provision of this Agreement is determined to be unenforceable or invalid by any Court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall continue in full force and effect. The Indemnification/Hold Harmless provisions of this Agreement shall survive termination of this Agreement.

18. Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

19. Warranty of Authority. Each individual executing this Agreement warrant that he/she is duly authorized to execute this Agreement on behalf of the entity represented.

20. Time of the Essence. Time is of the essence in the performance of this Agreement.

21. Interpretation. The parties have each independently reviewed and participated in the preparation of this Agreement, and the terms hereof shall not be construed in favor of or against any party, but shall be construed in accordance with their common meaning.

IN WITNESS WHEREOF, the parties have executed this License Agreement on the dates hereafter set forth.

LICENSEE

Name

Date: _____

By: _____
Name

Name

Date: _____

By: _____
Name

CITY

City of Palos Verdes Estates

Date: _____

By: _____
Name
City Manager

EXHIBIT A

EXHIBIT B