**LICENSE AGREEMENT**

|  |  |  |
| --- | --- | --- |
| **STATE OF TEXAS** | **§** |  |
|  | **§** |  |
| **COUNTY OF** | **§** | **LEASE NO.** |

This License Agreement ("Agreement") is made and entered into by and between the State of Texas, by and through its Texas Department of Transportation ("Department"), and       ("Licensee");

WHEREAS, the Department owns that certain real property more particularly described on Exhibit “A” attached hereto and incorporated herein for all purposes and hereinafter referred to as “Premises”; and

WHEREAS, Licensee has submitted a request to the Department to use the Premises for the sole purpose of      ; and

WHEREAS, the Department has agreed to allow Licensee to use the Premises for only said purpose pursuant to certain terms and conditions;

NOW THEREFORE, for and in consideration of the foregoing premises, terms, conditions, covenants and performances contained herein, the Department and Licensee hereby enter into this Agreement and agree as follows:

**PERMITTED USE OF PREMISES**

1.01 The Department agrees that the Licensee may use the Premises for the sole purpose      .

**TERM**

2.01 This Agreement is for a term of       (     ) days, commencing on      ,       and terminating on      ,      .

**CONSIDERATION**

3.01 Licensee agrees to pay the Department as consideration for the use of the Premises under this Agreement the sum of       Dollars ($     ), without set off or deduction. The consideration payment shall be due and payable in advance of the commencement of the term of this Agreement to the Department at its District Office in       County, Texas, or at such other place as the Department may from time to time direct by written notice delivered to Licensee.

**ACCEPTANCE OF PREMISES/DISCLAIMER**

4.01 **LICENSEE ACKNOWLEDGES THAT IT IS OCCUPYING THE PREMISES "AS IS" WITH ALL FAULTS, INCLUDING BUT NOT LIMITED TO ANY AND ALL POLLUTANTS, ASBESTOS, UNDERGROUND STORAGE TANKS AND/OR ANY OTHER HAZARDOUS MATERIALS, AND THAT THE DEPARTMENT HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES AS TO THE CONDITION OF SUCH PREMISES. LICENSEE HEREBY WAIVES ANY AND ALL CAUSES OF ACTION, CLAIMS, DEMANDS, DAMAGES AND LIENS BASED ON ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF SUITABILITY FOR A PARTICULAR PURPOSE, ANY AND ALL WARRANTIES OF HABITABILITY, AND ANY OTHER IMPLIED WARRANTIES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSEE HAS FULLY EXERCISED THE RIGHT TO INSPECT THE PREMISES FOR ANY DEFECTS AS TO THE SUITABILITY OF SUCH PROPERTY FOR THE PURPOSE TO WHICH LICENSEE INTENDS TO PUT THE PREMISES. THIS AGREEMENT IS SUBJECT TO ALL COVENANTS, EASEMENTS, RESERVATIONS, RESTRICTIONS AND OTHER MATTERS APPLICABLE TO THE PREMISES, AND LICENSEE IS USING THE PROPERTY SUBJECT TO RIGHTS, IF ANY, OF ANY OTHER PERSONS OR ENTITIES. THE DEPARTMENT WILL NOT HAVE TO MAKE ANY EXPENDITURE, INCUR ANY OBLIGATION, OR INCUR ANY LIABILITY OF ANY KIND WHATSOEVER IN CONNECTION WITH THIS AGREEMENT OR THE MAINTENANCE, OPERATION OR REPAIR OF THE PREMISES. THE DEPARTMENT SHALL NOT BE LIABLE TO LICENSEE OR ANY OTHER PARTY DUE TO THE PROPERTY OF THE DEPARTMENT BEING IMPROPERLY CONSTRUCTED OR BEING OR BECOMING OUT OF REPAIR. THE PROVISIONS OF THIS SECTION 4.01 SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS LICENSE.**

**COMPLIANCE WITH LAW**

5.01 Licensee, at its own expense, will comply with all Federal, State, municipal and other laws, codes, ordinances, rules and regulations applicable to the Premises; will install, remove and alter such equipment and facilities in, and make such alterations to the Premises as may be necessary so to comply; will comply with such regulations as the Department may promulgate regarding sanitation, cleanliness and other health and/or environmental matters, including, without limitation, removal of garbage, trash and other waste caused directly or indirectly by Licensee, and will use the highest degree of care and all proper safeguards to prevent pollution of air, soil and water in, on, under and around the Premises. Licensee shall not discharge sewage, garbage, oil or gas, on the Department's property. Licensee shall not commit any act or permit any act which creates or may create a nuisance in or upon the Premises during the term of this Agreement. Licensee, at its sole cost and expense, shall take any and all corrective action deemed necessary or desirable by the Department, and as required by any applicable Federal, State, municipal and other laws, codes, ordinances, rules and regulations to cleanup, remove and abate any and all soil contamination, groundwater contamination or any other contamination of the Premises caused directly or indirectly by any release or discharge of any hazardous, toxic or otherwise harmful substances in, on, under and around the Premises by Licensee. Notwithstanding anything herein to the contrary, no part of the Premises shall be used for the manufacture or storage of flammable, explosive or hazardous materials or for any occupation which would be deemed by the Department or the Federal Highway Administration to be hazardous to either the highway or nonhighway user.

**IMPOSITIONS AND UTILITIES**

6.01 The term "Impositions" as used herein, shall mean all taxes, assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license, franchise and permit fees, personal property taxes, ad valorem taxes and other charges by any public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and/or nature whatsoever, that are assessed, levied, charged, confirmed or imposed during the term of this Agreement by any public authority upon or accruing from the Premises and/or any improvements or other property thereon whether belonging to the Department or Licensee, or for any use or occupation of the Premises. The term "Impositions" shall also include all penalties, interest and other charges payable by reason of any delay or failure or refusal of Licensee to make timely payments as required hereinafter. During the term of this Agreement, Licensee will pay all Impositions as and when they become due.

6.02 Licensee will pay all charges for gas, electricity, light, heat, air conditioning, power, telephone and all other utilities and similar services rendered or supplied to the Premises, and also all water rents, sewer service charges or other similar charges, including, but not limited to connection fees, transfer fees and deposits levied or charged against or in connection with the Premises. In no event will the Department be liable for any interruption or failure in the supplying of any utilities to the Premises.

**INDEMNITY**

7.01 **LICENSEE SHALL INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT, ITS RESPECTIVE SUCCESSORS AND ASSIGNS AND ITS RESPECTIVE AGENTS, REPRESENTATIVES, MEMBERS OF THE TEXAS TRANSPORTATION COMMISSION, CONTRACTORS AND EMPLOYEES ("INDEMNIFIED PARTIES") AGAINST ANY AND ALL PROCEEDINGS, SUITS, ACTIONS, CLAIMS, DAMAGES, JUDGMENTS, LIABILITIES, AWARDS AND EXPENSES WHATSOEVER ("CLAIMS"), WHETHER SUCH CLAIMS ARE MADE BY LICENSEE, LICENSEE’S EMPLOYEES, AGENTS, REPRESENTATIVES, OR BY THIRD PARTIES, WITHOUT LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF OR THE NEGLIGENCE OF ANY PARTY OR PARTIES, AND REGARDLESS OF WHETHER SUCH CLAIMS ARE CAUSED DIRECTLY OR INDIRECTLY BY THE NEGLIGENCE OF THE DEPARTMENT, THAT MAY BE BROUGHT OR INSTITUTED ON ACCOUNT OF OR GROWING OUT OF ANY AND ALL INJURIES OR DAMAGES, INCLUDING DEATH, TO PERSONS OR PROPERTY RELATING DIRECTLY OR INDIRECTLY TO (i) ANY OCCURRENCE IN, UPON, AT OR FROM THE PREMISES OR ANY PART THEREOF; (ii) THE USE OR OCCUPANCY OF THE PREMISES OR ANY PART THEREOF; TOGETHER WITH ANY AND ALL LOSSES THERETO, INCLUDING, BUT NOT LIMITED TO, ALL COSTS OF DEFENDING AGAINST, INVESTIGATING AND SETTLING THE CLAIMS. IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS INDEMNITY BY LICENSEE TO INDEMNIFY AND PROTECT THE DEPARTMENT FROM THE CONSEQUENCES OF THE DEPARTMENT'S OWN NEGLIGENCE WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE CLAIM. THE INDEMNITY PROVIDED FOR HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM WHERE THE CLAIM RESULTS FROM THE SOLE NEGLIGENCE OF THE DEPARTMENT. LICENSEE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE, WITH COUNSEL SATISFACTORY TO THE DEPARTMENT, OF ANY AND ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES; PROVIDED, HOWEVER, THE DEPARTMENT MAY, BUT HAS NO OBLIGATION TO, ELECT TO CAUSE THE ATTORNEY GENERAL OF THE STATE OF TEXAS TO INTERVENE OR ASSUME THE DEFENSE FOR THE DEPARTMENT AT THE SOLE EXPENSE OF LICENSEE. MAINTENANCE OF ANY INSURANCE DOES NOT AFFECT LICENSEE'S OBLIGATIONS OF INDEMNITY. LICENSEE WILL HAVE THE RIGHT TO CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF THE DEPARTMENT OR LICENSEE, AS LICENSEE MAY DEEM APPROPRIATE, PROVIDED THAT THE EXPENSES THEREOF ARE PAID BY LICENSEE, OR LICENSEE CAUSES THE SAME TO BE PAID BY ITS INSURER. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, LICENSEE'S OBLIGATION OF INDEMNITY AS SET FORTH HEREIN WILL CONTINUE BEYOND THE TERM OF THIS AGREEMENT IN THE EVENT LICENSEE REMAINS IN POSSESSION OF THE PREMISES FOR ANY REASON. LICENSEE IS ADVISED THAT USE OF THE DEPARTMENT'S PROPERTY IS WITHOUT RISK TO THE DEPARTMENT AND AT LICENSEE'S PERIL. ANY INSURANCE WHICH MAY BE CARRIED BY THE DEPARTMENT OR LICENSEE AGAINST ANY CLAIM OR DAMAGE TO ANY IMPROVEMENT SITUATED ON THE PREMISES SHALL BE FOR THE SOLE BENEFIT OF THE PARTY CARRYING SUCH INSURANCE AND UNDER ITS CONTROL. EACH PARTY HEREBY WAIVES ITS RIGHT AND THE RIGHT OF ITS INSURER OF SUBROGATION AGAINST THE OTHER PARTY.**

**LIABILITY INSURANCE**

8.01 At all times during the term of this Agreement, Licensee, at its sole cost and expense, shall carry commercial general liability insurance coverage with a company licensed by the Texas Department of Insurance and in a minimum amount of $1,000,000 each occurrence; $2,000,000 general aggregate, which policy shall insure against bodily injury, death and property damage and shall include (i) coverage for premises and operations; and (ii) contractual liability coverage insuring the obligations of Licensee under the terms of this Agreement, including but not limited to the indemnity obligations herein. The liability insurance policy required herein shall name the Department as an additional insured and shall include a waiver of subrogation endorsement in a form acceptable to the Department. Licensee shall furnish the Department with a certificate of insurance evidencing all coverage required herein prior to the commencement of this Agreement. Licensee shall cause the insurance carrier to certify that such insurance will not be canceled without thirty (30) days prior written notice to the Department. Licensee's obligation to carry and pay for the insurance described in this Agreement will continue beyond the term of this Agreement in the event Licensee remains in possession of the Premises for any reason.

**GENERAL PROVISIONS**

9.01 If any part of this Agreement for any reason is declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties concerning the Premises and with respect to the subject matter contained herein. In the event any action is instituted or other proceedings taken to enforce any term, covenant or condition herein contained or to recover any consideration or charge due or to recover possession of the Premises , Licensee agrees to and shall pay the Department's reasonable attorney's fees, costs, and expenses in connection therewith. This Agreement is personal to the Licensee. It is nonassignable and any attempt to assign this Agreement will terminate the license privileges granted to Licensee hereunder.

9.02 Upon expiration or sooner termination of this Agreement, Licensee shall restore the Premises to a safe, clean condition.

|  |  |
| --- | --- |
| **TEXAS DEPARTMENT OF TRANSPORTATION**  Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  name  Right of Way Division Director  Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **LICENSEE**  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |