

MEMORANDUM

TO: Mayor and City Council
FROM: Ron Bradsby, City Engineer
SUBJECT: LICENSE AGREEMENT FOR ENCROACHMENT
DATE: December 8, 2021

Background

Staff reviewed a set of plans for a building permit at 1480 Samuel Drive. On the site plan, staff noted a public utility easement along the frontage of the property. Upon drawing the extents of the easement on the site plan, it showed the porch was encroaching into the easement. The City's policy is to have no structures within public easements and staff stated on the plan set the structure needed to be shifted so the porch would be outside of the easement.

During one of the many inspections required for building a structure, the footings for the porch were within the public utility easement.

The construction process was too far along to require demolition and shift the house and porch. Staff reached out to the City Attorney to see to see what options were available to resolve this encroachment issue. Staff was advised that a license agreement would be the best option and counsel provided the document to be filled in. See attached document.

Exhibit B of the document is not completed. Staff needs to survey the property to draw an accurate diagram. The survey work is scheduled for Friday, December 10, 2021.

This document needs to be completed so closing on the property can be scheduled.


Recommendation

Staff recommends City Council authorize the City Manager to sign the agreement so closing on this property can be schedule.

Cost

Recording fees – approximately \$112.00 to be paid by the property owner(s).


Richard Meyers, City Manager


Ron Bradsby, City Engineer

AFTER RECORDING RETURN TO:
City of Cottage Grove
400 E. Main Street
Cottage Grove, OR 97424

LICENSE AGREEMENT FOR ENCROACHMENT

This License Agreement (the "Agreement") is by and between the City of Cottage Grove, an Oregon municipal corporation (the "Grantor"), and _Joseph Jaraczewski, Jr., a resident of the City of Cottage Grove (the "Grantee").

RECITALS:

- A. Grantee owns real property located at 1480 Samuel Drive, Cottage Grove, Oregon, 97424 and described in more detail in the attached Exhibit A (the "Property").
- B. Grantor holds a public utility easement (the "Easement") on the Property that prohibits structures within the easement area.
- C. Grantee's porch and steps ("Structures") on the Property encroach on the City's Easement (the "Encroachment Area"), as depicted in more detail in the attached Exhibit B.
- D. Grantor agrees to grant a license to occupy the Encroachment Area to Grantee subject to the terms and conditions of this Agreement.

AGREEMENT:

1. LICENSE. Grantor hereby grants to Grantee a temporary revocable license for maintenance and use of the Structures within Grantor's Easement, to the extent depicted in Exhibit B, attached and incorporated herein by this reference. This License does not constitute Grantor's acceptance of the Structures as a public improvement. Grantee agrees that this license does not create a lease interest or any other property interest in the Easement in favor of Grantee.
2. PERMITTED USE. This Agreement authorizes Grantee to use the Easement for the maintenance and use of the Structures within Grantor's Easement, as depicted on Exhibit B. This Agreement does not authorize the installation of any additional improvements on or under the surface of the Easement.
3. STRUCTURE CONDITION. During the term of this Agreement, Grantee will be responsible for all costs associated with the upkeep of the Structures, including any associated City fees, and will make such repairs so as to maintain Structures in a good, clean and safe condition. The responsibilities of the Grantee include, but are not limited to, ensuring that the Structures are constructed and maintained in a safe and workmanlike

manner, no items are attached to or protrude from the Structures, and that construction of the Structures adhere to applicable building codes and building permit requirements.

4. CITY ACCESS. This Agreement does not grant Grantee the right to exclude Grantor from areas in, on, above or around the Easement. Grantor will have a right of access to all areas of the Easement at all times, for any reason.
5. COSTS AND MAINTENANCE. Any and all costs incurred by Grantee associated with Grantee's use of the Easement are Grantee's sole responsibility.
6. NON-EXCLUSIVE. This Agreement is not exclusive and does not restrict Grantor from improving the Easement, or installing utilities in, on, above or around the Easement or granting such rights to others.
7. NO OBSTRUCTION. This Agreement does not give Grantee the right to obstruct the Easement for any reason unless the temporary right to obstruct has been granted by Grantor under a separate permit.
8. TERM AND REVOCATION OF LICENSE. This License will continue until revoked, and shall terminate automatically upon removal of the Structures from the Encroachment Area. Grantor may revoke this Agreement at any time and for any reason upon written notice to Grantee. Grantee acknowledges that this Agreement is revocable within the total and unrestricted discretion of Grantor at any time.
9. GRANTEE'S ADDITIONAL RIGHTS AND DUTIES.
 - a. Grantee agrees to indemnify, defend and hold Grantor, its officers, agents and employees harmless against all liability, loss and costs arising from actions, suits, claims or demands for the acts or omissions of Grantee, and Grantee's officers, agents and employees, as related to this Agreement.
 - b. Grantee shall obtain, at Grantee's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. Such insurance shall be primary and non-contributory. Coverage shall be a minimum of \$2,000,000 per occurrence, and \$2,000,000 aggregate, including personal injury. Proof of such insurance coverage will be provided to Grantor upon request in the form of a certificate of insurance naming Grantor as an additional insured.
 - c. Grantee will comply fully with all laws pertaining to the protection of human health and the environment, all laws regarding the use, generation, storage, transportation, treatment, disposal or other handling of hazardous substance. Grantee will promptly advise Grantor in writing of any hazardous substances

regulated by such laws that are used, generated, manufactured, stored, transported, or otherwise handled in the Encroachment Area or Easement. Grantee will exercise extreme care in handling any hazardous substances and will not cause or permit hazardous substances to be spilled, leaked, disposed of or otherwise released in the Encroachment Area or Easement. The term "hazardous substances" is used in the very broadest sense and refers to materials which, because of their quantity, concentration, or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly handled, treated, stored, transported, disposed of or otherwise managed. The term will include, but is not limited to, all hazardous substances, hazardous materials and hazardous wastes listed by the U.S. Environmental Protection Agency under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TCSA), and all comparable state statutes.

- d. Grantee will pay when due all personal property taxes assessed, if any, against its personal property, equipment or fixtures that are located, as allowed by terms and conditions of this Agreement, within the Encroachment Area.
- e. Grantee will apply for any exemptions from property tax, if available or applicable, for Grantee's use of the Encroachment Area. Grantee will be required to pay any and all real property taxes which may be owed for its use of the Encroachment Area, for failure to apply for an exemption, or for any denial of any exemption. Grantee will reimburse Grantor for all real property taxes and special assessments levied against the Encroachment Area in the event they are paid by Grantor rather than becoming liens against the Encroachment Area, within thirty (30) days of receiving a billing statement from Grantor for such charges.
- f. Grantee will be responsible for all recording fees associated with this Agreement and any release of this Agreement as may be required in the future.

10. **BINDING EFFECT.** The terms of this License will extend to and be binding upon the heirs, administrators, executors, personal representatives, successors and assigns of the parties hereto. This Agreement is held by Grantee and any subsequent owner of the Property, and the License rights and obligations will be transferred to any successor owner of the Property until such time as it is revoked by Grantor. This Agreement shall run with the Property until termination or revocation.

11. **NOTICE.** Written notice under this Agreement will be provided by sending such notice pre-paid first-class mail to the address set out for each party herein. A party may change its address for notice purposes by providing the other party with written notice of such change.

Grantor Notice:

City of Cottage Grove
400 E. Main Street
Cottage Grove, OR 97424

Grantee Notice:

Joseph Jaraczewski, Jr.
1480 Samuel Drive
Cottage Grove, OR 97424

12. VARIANCE. This Agreement will not justify a variance in the future.

13. AUTHORIZATION. Grantor has authorized the execution and acceptance of this Agreement at its City Council meeting dated December 13, 2021. Grantee's representative has been authorized by Grantee's members to enter into this Agreement and bind Grantee to the terms, conditions, and duties herein.

CITY OF COTTAGE GROVE

GRANTEE

Richard Meyer, City Manager

Joseph Jaraczewski, Jr.

Date: _____

Date: _____

STATE OF OREGON

COUNTY OF LANE

This License Agreement was acknowledged before me on _____, 2021, by Richard Meyer, City Manager, for the City of Cottage Grove.

Notary Public

STATE OF OREGON

COUNTY OF LANE

This License Agreement was acknowledged before me on _____, 2021, by Joseph Jaraczewski, Jr.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

A tract of land in the Northeast Quarter of Section 33, Township 20 South, Range 3 West, Willamette Meridian, Lane County, Oregon and more particularly described as follows:

Lot 25 of the Replat of Cottage Heights Subdivision as recorded Reception Number 2004-016101 Lane County Deeds and Records, Lane County, Oregon.

EXHIBIT B

MAP OF ENCROACHMENT AREA