

CITY OF LAGO VISTA, TEXAS

RESOLUTION NO. 24-2067

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS APPROVING A REVOCABLE LICENSE AGREEMENT BETWEEN THE CITY OF LAGO VISTA AND MARLENE GUERRERO AND MILTON JAVIER PLUA-CHAVEZ FOR AN ENCROACHMENT INTO THE PUBLIC RIGHT-OF-WAY IMMEDIATELY ADJACENT TO 21310 CHOCTAW COVE; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the City of Lago Vista (referred to hereinafter as the “City”) owns real property which is legally described and platted as a public right-of-way named as Choctaw Cove; and

WHEREAS, the City has received a request through the City Manager for a revocable license agreement to allow the encroachment of a portion of a six-foot high wood privacy fence into the public right-of-way immediately adjacent to 21310 Choctaw Cove as described in the attached proposed license agreement that was in existence when the current owners acquired the property in 2019; and

WHEREAS, despite concerns about additional such requests, the Public Works Director has confirmed that the existing encroachment does not create a public safety hazard or preclude the City from performing necessary maintenance or repairs to any right-of-way improvements in that specific location; and

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

SECTION 1. The facts and recitations contained in this resolution are hereby found and declared to be true and correct and are incorporated by reference herein and expressly made a part hereof.

SECTION 2. The City Manager is hereby authorized to execute a revocable license agreement in substantially the same form as attached hereto as **Exhibit “A.”**

SECTION 3. All orders, ordinances, resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this resolution are hereby repealed to the extent of such conflict only, and the provisions of this resolution shall be and remain controlling as to the matters resolved herein.

SECTION 4. This resolution shall be effective immediately upon adoption.

AND, IT IS SO RESOLVED.

PASSED AND APPROVED this 18th day of July 2024.



Kevin Sullivan, Mayor

ATTEST:



Lucy Aldrich, City Secretary

On a motion by Councilor Roberts, seconded by Councilor Smith, the above and foregoing instrument was passed and approved.

REVOCABLE LICENSE TO ENCROACH AGREEMENT

STATE OF TEXAS

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COUNTY OF TRAVIS

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KNOW ALL BY THESE PRESENTS:

This is a revocable license agreement for the use of a certain portion of the public right-of-way adjacent to 21310 Choctaw Cove for an existing six-foot high wood privacy fence as more specifically described in the attached Exhibit "A" between the City of Lago Vista, Texas, acting by and through its City Manager (referred to hereinafter as the "City") and Marlene Guerrero and Milton Javier Plua-Chavez (referred to hereinafter as "Licensee"). Collectively, the City and Licensee will hereinafter be referred to as the "Parties."

RECITALS

The Parties acknowledge and agree on the following:

1. The City is the owner of the public right-of-way known as Choctaw Cove that is included in the description attached as Exhibit "A" (referred to hereinafter as the "Property").
2. The encroachment described and highlighted in Exhibit "A" is located adjacent to the lot owned by the Licensee which includes their principal residence.
3. It is in the best interests of the City to have access to the existing and future infrastructure within the Choctaw Cove right-of-way while allowing for the encroachment of private property, limited to an existing six-foot high wood privacy fence into the right-of-way as described in the attached Exhibit "A."
4. The City finds that there are negligible negative impacts that this agreement will have on the public's use of the right-of-way for the described encroachment.
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 document, 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 the Licensee, all of which the Licensee accepts, the City authorizes and permits the Licensee to have the non-exclusive use of the right-of-way for the encroachment of the existing six-foot

high wood privacy fence specifically as shown in the attached Exhibit "A." The herein described privileges are non-transferable and shall not convey with the sale of the property during the terms of the agreement as described in Article 2. The Licensee accepts the condition of the Property as is, in its condition as of the effective date of this agreement with no expectation that the City will incur any expense in connection with the Property.

ARTICLE 2 TERM OF THE AGREEMENT AND TERMINATION

This agreement shall remain in effect following its execution until revoked or terminated upon the occurrence of any of the following:

1. Either the City or the Licensee may terminate this Agreement without cause by submitting thirty (30) 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 the Licensee by the City of the default.
3. Licensee sells or otherwise conveys the property known as 21310 Choctaw Cove to another individual or entity.
4. The existing six-foot wood privacy fence that is encroaching into the Choctaw Cove right-of-way that is the object of this agreement is removed or in need of repair or replacement to the extent that a building permit is required for that repair or replacement by the Lago Vista Code of Ordinances.

Upon termination of this agreement, Licensee shall remove all things placed within the Choctaw Cove right-of-way by the Licensee or its agents, servants, employees, or ancestors in title. Licensee shall restore the right-of-way as nearly as practical to its condition prior to the placement of the six-foot wood privacy fence in the Choctaw Cove right-of-way.

The failure of the City to declare the Licensee in default of this agreement shall not waive the right or bar the City from terminating this agreement because of any subsequent violation of its terms.

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 any public utility or telecommunication providers.
2. Licensee shall not modify the existing six-foot wood privacy fence or construct any other improvements that would encroach into the Choctaw Cove right-of-way without the written approval of the Public Works Director in addition to any otherwise required permits.
3. Licensee shall maintain the existing six-foot wood privacy fence or cause it to be removed if it is allowed to fall into a condition of disrepair.

4. Licensee acknowledges that the City may desire to repair, repave, or otherwise improve the right-of-way. In that event, Licensee shall allow the City access for such period of time as is necessary. The City also retains the right to access the right-of-way for all rights incidental to and necessary in connection with any utility mains or facilities that may be located on or underneath the area of the encroachment.

ARTICLE 4 NOT A CONVEYANCE OF REAL PROPERTY INTEREST

The Parties expressly acknowledge that this agreement is not a conveyance or transfer of any tenancy, leasehold, or ownership interest of any kind in the Choctaw Cove right-of-way.

ARTICLE 5 NO LIABILITY FOR THE CITY

The Parties agree that the City shall have no liability for any losses or damages, direct or consequential, resulting from the loss of anything of value located in or near the encroachment in the Choctaw Cove right-of-way, real or personal, whether by theft, vandalism, negligence, act of God, or other event or occurrence.

ARTICLE 6 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 herein.
3. Paragraph Headings. The paragraph headings are for convenience and references 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:

City:

The City of Lago Vista, Texas
ATTN: City Secretary
P.O. Box 4727
Lago Vista, TX 78645

Licensee:

Marlene Guerrero and Milton Javier Plua-Chavez
21310 Choctaw Cove
Lago Vista, TX 78645

5. Choice of Law and Venue. This agreement is made and entered into by the Parties in Lago Vista, Travis County, Texas, and is intended to be performed in Lago Vista. 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 Travis County, Texas.
6. Entire Agreement. 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.
7. Rights and Remedies. The rights and remedies provided in 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 indicated Parties.
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 (digital) copy." This agreement may be signed and a "portable document format (pdf) copy" transmitted electronically which shall then constitute an original signature on the document.
10. Effective Date. The effective date of this agreement shall be the date last signed by either Party.

AGREED to on behalf of the City on this _____ day of _____, 2024:

ATTEST:

City of Lago Vista, Texas

Lucy Aldrich, City Secretary

Tracie Hlavinka, City Manager

AGREED to on behalf of the Licensee:

Marlene Guerrero Plua-Chavez

Date

Milton Javier Plua-Chavez

Date

STATE OF TEXAS §

COUNTY OF TRAVIS §

This agreement was acknowledged before me on _____, 2024, by Joshua Marlene Guerrero and Milton Javier Plua-Chavez on behalf of said Licensee.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2024.

Notary Public,-State of Texas

My Commission expires: _____

AFTER RECORDING PLEASE RETURN TO:

City of Lago Vista
City Secretary
P.O. Box 4727
Lago Vista, Texas 78645-0008

EXHIBIT "A"
ENCROACHMENT DESCRIPTION

