

ORDINANCE NO. _____

An ordinance granting a private license to Fenix TX Owner LP to occupy, maintain and utilize portions of Zang Boulevard, Beckley Avenue, Colorado Boulevard and Madison Avenue rights-of-way located near the intersection of Zang Boulevard and Colorado Boulevard adjacent to City Block 19/3341 within the limits hereinafter more fully described, for the purpose of occupying, maintaining and utilizing four electrical conduits, thirty-seven trees, sixteen tree grates, thirty-seven uprights, four landscape and irrigation areas, four bollards, a landscape buffer, a bench and a trash receptacle; providing for the terms and conditions of this license; providing for the annual and one-time fee compensation to be paid to the City of Dallas; providing for payment of the publication fee; and providing an effective date of this license and ordinance.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That a private license, hereinafter referred to as "license", subject to the restrictions and conditions of this ordinance, is hereby granted to Fenix TX Owner LP, a Delaware limited partnership, its successors and assigns, hereinafter referred to as "**GRANTEE**", to occupy, maintain and utilize for the purpose set out hereinbelow the tracts of land described in Exhibit A, hereinafter referred to as "licensed area" which is attached hereto and made a part hereof.

SECTION 2. That this license is granted for a term of forty (40) years, unless sooner terminated according to other terms and provisions herein contained.

SECTION 3. That **GRANTEE** shall pay to the City of Dallas the sum of **FOUR THOUSAND AND NO/100 DOLLARS (\$4,000.00)** annually for the license herein granted for the four electrical conduits, said sum to become due and payable on the 2nd day of January each year, in advance, during the term hereof; provided, however, that the first payment due hereunder in the sum of **FOUR THOUSAND AND NO/100 DOLLARS (\$4,000.00)** shall be paid prior to the final passage of this ordinance and shall cover the consideration for 2022. In addition, in accordance with the special fees established by Section 43-115.1 of the Dallas City Code, **GRANTEE** shall pay to the City of Dallas a one-time license fee in the sum of **EIGHTEEN HUNDRED AND NO/100 DOLLARS (\$1,800.00)**, for the license

SECTION 3. (continued)

herein granted for the thirty-seven trees, sixteen tree grates, thirty-seven uprights, four landscape and irrigation areas, four bollards, a landscape buffer, a bench and a trash receptacle, said sum to be paid prior to the final passage of this ordinance and shall cover the total consideration for said purpose during the license term. Such annual and one-time fee consideration, collectively, shall be in addition to and exclusive of any other taxes or special assessments required by law to be paid by **GRANTEE**. Should **GRANTEE** fail to pay the above stated annual fee within sixty (60) days of the due date, the Director of Department of Public Works may terminate this license. All sums payable to the City of Dallas hereunder shall be paid to the Chief Financial Officer of the City of Dallas and deposited in General Fund, Fund 0001, Department PBW, Unit 1181, Revenue Code 8200. In the event **GRANTEE's** check for the license fee is dishonored, **GRANTEE** shall pay to the City a processing fee of \$25.00 for each dishonored check. Additionally, all monies owed to the City under this license shall be subject to the assessment of interest at a rate of 10 percent a year from the day after any monies become due until it is paid in full, in accordance with Section 2-1.1 of the Dallas City Code.

SECTION 4. That the licensed area shall be used by **GRANTEE** for the following purpose under the direction of the Director of Department of Public Works of the City of Dallas: occupying, maintaining and utilizing four electrical conduits, thirty-seven trees, sixteen tree grates, thirty-seven uprights, four landscape and irrigation areas, four bollards, a landscape buffer, a bench and a trash receptacle.

SECTION 5. That this license is subject to the provisions set forth in EXHIBIT B, attached hereto and made a part hereof.

SECTION 6. That this license is nonexclusive and is made expressly subject and subordinate to the right of the City to use the licensed area for any public purpose. The Governing Body of the City of Dallas reserves the right by Resolution duly passed by said Governing Body, to terminate and cancel this license upon giving **GRANTEE** sixty (60) days notice of its intent to cancel. Upon termination, all rights granted hereunder shall thereupon be considered fully terminated and cancelled and the City of Dallas shall not be held liable by reason thereof. Said Resolution shall be final and shall not be subject to review by the Courts. **GRANTEE** shall have the right of cancellation upon giving the City

SECTION 6. (continued)

of Dallas sixty (60) days written notice of its intention to cancel, and in either event upon the termination or cancellation by the City or **GRANTEE**, as the case may be, this license shall become null and void and **GRANTEE** or anyone claiming any rights under this instrument shall remove, to the extent required by the Director of Department of Public Works, any improvements and encroachments from the licensed area at **GRANTEE's** expense. Failure to do so shall subject **GRANTEE** to the provisions contained in EXHIBIT B, Subsection (a). All work shall be done at the sole cost of **GRANTEE** and to the satisfaction of the Director of Department of Public Works.

SECTION 7. That the license is subject to the following conditions, terms and reservations, **GRANTEE** shall ensure minimum sidewalk width of six feet and comply with sidewalk requirements as established in Planned Development (PD) 468. Sidewalks must be free of obstruction at all times. See SEC. 51P-468, Subdistricts A through G, and K through N of SEC. 51A-13.503 Existing Streets of the City of Dallas Development Code.

SECTION 8. That upon the effectiveness of this ordinance, the Director of Department of Public Works, or designee, is hereby authorized to execute a NOTICE OF LICENSE and to file same in the deed records of Dallas County, Texas. Additionally, the Director of Department of Public Works, or designee, is hereby authorized to execute a cancellation of Notice of License upon termination by the City or **GRANTEE** and to file such cancellation of Notice of License in the deed records of Dallas County, Texas.

SECTION 9. That the terms and conditions contained in this ordinance shall be binding upon **GRANTEE**, its successors and assigns.

SECTION 10. That this license may not be assigned without prior written approval from the Director of Department of Public Works, or designee. Such assignment shall recite that it is subject to the terms, restrictions and conditions contained in this ordinance. The assignee shall deliver evidence of ownership of property abutting the licensed area and a copy of the assignment, along with the assignee's written acceptance of the provisions of this ordinance, to the Director of Department of Public Works within 10 days of such assignment; said assignment and written acceptance shall be forwarded to the City Secretary of the City of Dallas. Should **GRANTEE** fail to obtain prior written approval for

SECTION 10. (continued)

assignment of this license or fail to provide the City of Dallas with the required written acceptance and a copy of the assignment, the Director of Department of Public Works, or designee, may terminate this license.

SECTION 11. That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the Deed Records of Dallas County, Texas, which certified copy shall be delivered to the Director of Department of Public Works, or designee. Upon receipt of the fees pursuant to Section 3 of this ordinance, an acceptable certificate of insurance and the fee for publishing this ordinance which **GRANTEE** shall likewise pay, the Director of Department of Public Works, or designee, shall deliver to **GRANTEE** the certified copy of this ordinance. The Director of Department of Public Works, or designee, shall be the sole source for receiving certified copies of this ordinance for one year after its passage.

SECTION 12. That this ordinance is also designated for City purposes as Contract No. PBW-2021-00016387.

SECTION 13. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:
CHRISTOPHER J. CASO,
City Attorney

ALI HATEFI, Director
Department of Public Works

BY 
Assistant City Attorney

BY 
Lolita Williams for (Aug 1, 2022 15:32 CDT)
Assistant Director

Passed _____.