

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE APPROVING AN TEMPORARY LICENSE AGREEMENT BETWEEN THE CITY OF DENTON AND ZACHRY CONSTRUCTION CORPORATION FOR TEMPORARY ACCESS AND USE OF (1) AN APPROXIMATE 3.44 ACRE TRACT OF LAND SITUATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF EAST MCKINNEY STREET AND NORTH MAYHILL ROAD; AND (2) AN APPROXIMATE 3.457 ACRE TRACT OF LAND SITUATED ALONG THE WEST SIDE OF THE 2000 BLOCK OF SOUTH MAYHILL ROAD, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Zachry Construction Company ("Zachry") has been awarded the Texas Department of Transportation Mayhill Road Widening & Improvements project CCSJ: 0918-46-246, constituting widening of a two lane rural road to a four lane urban section from US Highway 380 (University Drive) to North of Edwards Road (the "Project"); and

WHEREAS, it is the desire of Zachry to occupy and use a 3.44 acre tract of land and a separate 3.457 acre tract of land, both owned by the City, in connection with its construction activities related to the Project; and

WHEREAS, the City Council finds the transaction contemplated by the Agreement is in the best interest of the citizens of the City of Denton; NOW, THEREFORE;

THE COUNCIL OF THE CITY OF DENTON, TEXAS HEREBY ORDAINS:

SECTION 1. The recitals and findings contained in the preamble of this ordinance are expressly incorporated herein.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute a Temporary License Agreement, in substantially the same form as said Agreement being attached hereto and incorporated herein as Exhibit "A," for and on behalf of the City of Denton, Texas.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
AARON LEAL, INTERIM CITY ATTORNEY

BY: \_\_\_\_\_

## TEMPORARY LICENSE AGREEMENT

This Temporary License Agreement (the “Agreement”), is made this \_\_\_\_ day of \_\_\_\_\_, 2017, between the City of Denton, Texas, a Texas home rule municipal corporation (the “City”) and Zachry Construction Corporation, a Texas corporation (“Zachry”).

WHEREAS, the City owns certain tracts of real property located in the M. Forrest Survey, Abstract Number 417, within the City of Denton, Texas, specifically located on the northeast corner of E. McKinney Street and Mayhill Road; and a tract of land situated in the David Hough Survey, Abstract Number 646 and more specifically located on the west side of the 2000 Block of S. Mayhill Road, (the “City Owned Lands”);

WHEREAS, Zachry has been awarded the Texas Dept. of Transportation Mayhill Road Widening & Improvements project CCSJ: 0918-46-246, constituting widening of a two lane rural road to a four lane urban section from US Highway 380 (University Drive) to North of Edwards Road (the “Project”);

WHEREAS, it is the desire of Zachry to occupy and use a 3.44 acre of City Owned Land and a separate 3.457 acre tract of City owned land in connection with its construction activities related to the Project;

WHEREAS, the City is amenable to granting a temporary license over the lands shown as the “Licensed Premises,” described and depicted on Exhibits “A-1,” “B-1,” and “A-2” attached hereto, to conduct certain activities, in accordance with the terms, provisions and conditions set forth herein.

## ARTICLE I.

### LICENSE

Section 1.01. License. In consideration of the mutual covenants and agreements of this Agreement, and for good and valuable consideration as set forth herein, the City hereby grants to Zachry, upon the terms and conditions set forth in this Agreement, a temporary license on and over the Licensed Premises, for the sole purposes of (i) clearing, grading, and leveling; (ii) placement of rock and/or gravel; (iii) ingress and egress of equipment and machinery; (iv) storage and staging of materials, equipment, and machinery; (v) fencing; (vi) lighting; and (vii) placement of construction trailers, all in connection with activities related to the Project.

Section 1.02. Use. Any use of the Licensed Premises not expressly permitted by this Article I is expressly prohibited.

Section 1.03. Term. The effective date of this Agreement is August \_\_, 2017 (the “Effective Date”). This Agreement and the license granted herein shall expire upon the completion of the Project.

Section 1.04. Restoration. Prior to the expiration of this Agreement and the license granted herein, Zachry shall (i) remove any property, material, and/or equipment of Zachry and/or any other third party, along with all trash and debris, from the Licensed Premises; and (ii) restore the Licensed Premises to the condition as existed at the Effective Date hereof.

## ARTICLE II.

### COMPENSATION

Section 2.02. Compensation. As consideration for the rights granted by this Agreement, Zachry shall pay to the City, on or before the Effective Date, the sum of Ten and No/100 Dollars (\$10.00).

### ARTICLE III.

#### INSURANCE & INDEMNITY

Section 3.01. Insurance. Zachry shall procure and carry the insurance coverages, and upon the terms, as prescribed in Exhibit “C,” attached hereto and made a part hereof.

Section 3.02. Indemnity. Zachry shall indemnify, defend, and hold harmless, to the fullest extent permitted by law, the City, and City’s respective officers, employees, elected officials, and/or agents from and against any and all losses, damages, claims, or liabilities, of any kind or nature, which arise directly or indirectly, or are related to, in any way, manner or form, the activities contemplated hereunder, occupation of the Licensed Premises by Zachry or any party acting under the authority of Zachry, or the omission of the activities contemplated hereunder. Zachry further covenants and agrees to defend any suits or administrative proceedings brought against the City and/or the City’s respective officers, employees, elected officials, and/or agents on account of any such claim, as directed by the City, and, without limiting the general indemnity provided herein, to pay or discharge the full amount or obligation of any such claim incurred by, accruing to, or imposed on the City, or the City’s respective officers, employees, elected officials, and/or agents, as applicable, resulting from any such suits, claims, and/or administrative proceedings or any matters resulting from the settlement or resolution of said suits, claims, and/or administrative proceedings. In addition, Zachry shall pay to the City, the City’s respective officers, employees, elected officials, and/or agents, as applicable, reasonable and necessary attorneys’ fees incurred by such parties in enforcing Zachry’s indemnity in this Section 3.02.

THE CITY, AND ITS RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS, AND AGENTS, SHALL NOT BE LIABLE, AND ZACHRY, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY RELEASES THE CITY, AND ITS RESPECTIVE OFFICERS, EMPLOYEES, ELECTED OFFICIALS, AND AGENTS, FOR, FROM AND/OR AGAINST ANY AND ALL LOSSES, DAMAGES, CLAIMS, OR LIABILITIES, ON ANY THEORY OF LEGAL LIABILITY, NOW EXISTING OR EXISTING IN THE FUTURE, INCLUDING, BUT NOT LIMITED TO THE NEGLIGENCE, OF ANY KIND, TYPE OR DEGREE, OF THE CITY, RELATED TO THE ACTIVITIES CONTEMPLATED BY THIS

AGREEMENT AND/OR THE OCCUPATION OF THE LICENSED PREMISES BY ZACHRY, ITS AGENTS, CONTRACTORS OR ANY PARTY ACTING UNDER THE AUTHORITY OF ZACHRY.

The indemnity and release provided herein shall survive the termination or expiration of this Agreement.

#### ARTICLE IV.

##### EVENTS OF DEFAULT/REMEDIES

Section 4.01 (a). City Default/Zachry Remedies. In the event the City shall default in the performance of any term or provision of this Agreement for any reason other than failure by Zachry to perform hereunder, Zachry may, if said default shall be continuing after ten (10) calendar days notice of such default to the City, as its sole and exclusive remedy, either (i) terminate this Agreement; or (ii) enforce specific performance of this Agreement.

(b) Zachry Default/City Remedies. In the event Zachry shall default in the performance of any term or provision of this Agreement for any reason other than failure by City to perform hereunder, City may, if said default shall be continuing after ten (10) calendar days notice of such default to Zachry, exercise any right or remedy available to it by law, contract, equity or otherwise, including without limitation, specific performance and the right to terminate this Agreement. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently.

#### ARTICLE V.

##### MISCELLANEOUS

Section 5.01. No Waiver. No failure to exercise and no delay in the exercise on the part of either party hereto of any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other further exercise thereof or the exercise of any other right.

Section 5.02. Notice. Any notice required or permitted to be given hereunder shall be given in writing and delivered by hand delivery, telephonic facsimile, or mailed certified or registered

mail, to the party to whom such notice or communication is directed at the address of such party as follows:

Zachry

Zachry Construction Corporation  
Attn: Kevin Ghorbani, Project Manager  
502 W. Oakdale  
Grand Prairie, Texas 75050  
Facsimile: (972) 264-5597

City

Paul Williamson  
Capital Projects – Real Estate  
901-A Texas Street  
Denton, Texas 76209  
Facsimile: (940) 349-8951

Copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Trey Lansford, Deputy City Attorney  
City Attorney's Office  
215 East McKinney Street  
Denton, Texas 76201  
Facsimile: (940) 382-7923

Any such notice or other communication shall be deemed to have been given and received, on the date it is personally delivered or delivered by telephonic facsimile, or if it is mailed as aforesaid, on the third day after it is mailed.

5.03. No Assignment. This Agreement, and the license granted herein, is personal to Zachry and may not be assigned without the express written consent of the City. Any attempt to assign this Agreement, or the license granted herein, in whole or in part, without such consent shall terminate this Agreement and the license granted herein.

5.04. Delegation. Unless otherwise provided herein or required by law and/or local ordinance or charter, any action required or permitted to be taken herein by the City, is hereby delegated to the City Manager of the City of Denton, or his designee.

5.05. Relationship of Parties. The relationship between the City and Zachry for purposes of this Agreement is at all times solely that of licensor and licensee, and shall not be deemed in any event a partnership, joint venture, or joint enterprise.

5.06. Compliance with Applicable Laws. Zachry shall comply with all applicable federal, state and local rules, regulations, statutes, laws, orders, and ordinances pertaining to, in any way, manner or form, the activities described in or contemplated by this Agreement.

5.07 Compliance with Environmental Laws. The City warrants and represents that at the commencement of this Lease Agreement, that to its knowledge there are no Hazardous Substances including any petroleum, petroleum product, or other types of hydrocarbons in or on the Licensed Premises in contravention of any federal, state, or local laws, regulations, or common law pertaining to protection of the environment or human health and safety. Upon vacating the premises, Zachary shall provide a Phase I ESA and if necessary a Phase II ESA and perform all applicable and necessary site mitigation only in conjunction with their use of these Licensed Premises and return it to a condition equal to or better than that which existed prior to the beginning of the project. Said assessment will be tendered and all applicable mitigation conducted to the satisfaction of the City as a condition to final acceptance of the project.

5.08. Applicable Law and Venue. This Agreement is to be construed under Texas law and applicable federal law, without regard to conflict of law rules that would direct the application of laws of any other jurisdiction, and all obligations of the parties created by this Agreement are performable in Denton County, Texas. VENUE FOR ANY ACTION BROUGHT PURSUANT TO THIS AGREEMENT, OR ANY ACTIVITY CONTEMPLATED HEREBY, SHALL LIE EXCLUSIVELY IN THE COURTS OF COMPETENT JURISDICTION OF DENTON COUNTY, TEXAS.

5.09. Partial Invalidity. Except as otherwise may be provided herein, if any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of this Agreement, and this Agreement shall be construed as if it had not included the invalid, illegal or unenforceable provision.



5.10. Prior Agreements. This Agreement constitutes the parties' sole agreement and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter hereof.

5.11. Amendment. No amendment, modification, or alteration of this Agreement is binding, unless in writing, dated subsequent to the date of this Agreement, and duly authorized and executed by the parties. Notwithstanding the provisions of Section 5.04, above, the authority to amend this Agreement is not delegated by the City Council of the City of Denton to the City Manager.

5.12. Representations. Zachry represents and warrants to the City (i) that it possesses the legal authority to enter into this Agreement and has taken all actions necessary to legally bind Zachry to all terms hereof; (ii) that the party executing this Agreement on behalf of Zachry possesses all authority necessary to legally bind Zachry to all terms hereof; and (iii) this Agreement is binding and enforceable upon Zachry in accordance with the terms hereof.

5.13. License Agreement. The intent of this Agreement is to grant a license upon the terms and provisions hereof, solely during the times and solely for the purposes described herein. This Agreement shall not be construed in any way, manner or form as conveying or assigning to Zachry any interest in real property, of any kind, nature or character, in or to the Licensed Premises.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF DENTON

\_\_\_\_\_  
TODD HILEMAN, CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

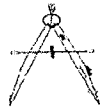
BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
AARON LEAL, INTERIM CITY ATTORNEY

BY: \_\_\_\_\_

ZACHRY CONSTRUCTION CORPORATION

BY: \_\_\_\_\_  
NAME: Kevin Ghorbani  
TITLE: Project Manager



**Arthur Surveying Co., Inc.**  
*Professional Land Surveyors*

P.O. Box 54 ~ Lewisville, Texas 75067  
Office: (972) 221-9439 ~ Fax: (972) 221-4675

**EXHIBIT "A-1"**

**3.457 Acres**  
**City of Denton, Denton County, Texas**

**BEING** all that certain lot, tract or parcel of land situated in the David Hough Survey, Abstract Number 646, City of Denton, Denton County, Texas, and being part of Tract II as described by deed to Kevin Nelms, Recorded in Volume 3432, Page 911, Deed Records, Denton County, Texas (D.R.D.C.T.), and being more particularly described as follows:

**BEGINNING** at a 1/2 inch iron rod with yellow cap stamped "Arthur Surveying Company" (ASC) set for corner being in the north line of said Nelms tract and being the northwest corner of a tract of land described by deed to the City of Denton, recorded under Instrument Number 2014-26435, Official Public Records, Denton County, Texas (O.P.R.D.C.T.), same point being in the south line of a tract of land described by deed to Mason A. Haggard and wife, Wilma Haggard, recorded in Volume 337, Page 430, D.R.D.C.T.;

**THENCE** South 02 degrees 52 minutes 33 seconds West, with the west line of said City of Denton tract, a distance of 324.81 feet to a 1/2 inch iron rod with yellow cap stamped "ASC" set for corner being an ell corner of said City of Denton tract;

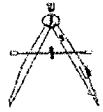
**THENCE** South 87 degrees 51 minutes 47 seconds West, with the north line of a Tract I, described by deed to Kevin Nelms, recorded in Volume 3432, Page 911, D.R.D.C.T., a distance of 455.41 feet to a 1/2 inch iron rod with yellow cap stamped "ASC" set for corner being in the south line of said Haggard tract and the north line of said Nelms Tract I;

**THENCE** North 01 degrees 32 minutes 41 seconds East, a distance of 333.01 feet to a 1/2 inch iron rod with yellow cap stamped "ASC" set for corner being the northwest corner of said Nelms Tract II;

**THENCE** North 88 degrees 56 minutes 53 seconds East, a distance of 462.49 feet to the **POINT OF BEGINNING** and containing 3.457 acres of land, more or less.

*Douglas L. Arthur*  
9.13.16





Arthur Surveying Co., Inc.  
*Professional Land Surveyors*

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P.O. Box 54 ~ Lewisville, Texas 75067  
Office: (972) 221-9439 ~ Fax: (972) 221-4675

North: 7119002.6532      East : 2401396.4899  
Line Course: S 02-52-33 W Length: 324.81  
North: 7118678.2522      East : 2401380.1936  
Line Course: S 87-51-47 W Length: 455.41  
North: 7118661.2709      East : 2400925.1003  
Line Course: N 01-32-41 E Length: 333.01  
North: 7118994.1598      East : 2400934.0774  
Line Course: N 88-56-53 E Length: 462.49  
North: 7119002.6506      East : 2401396.4894

Perimeter: 1575.71    Area: 150,604 sq. ft. 3.46 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0026      Course: S 10-41-45 W  
Error North: -0.00253      East : -0.00048  
Precision 1: 606,046.15

**EXHIBIT "A-2" to License Agreement**

**BEING ALL THAT CERTAIN TRACT OR PARCEL OF LAND SITUATED IN THE CITY AND COUNTY OF DENTON, STATE OF TEXAS AND BEING IN THE M. FORREST SURVEY ABSTRACT NUMBER 417 AND BEING PART OF A 4.02 ACRE TRACT OF LAND DESCRIBED IN A DEED FROM BLACK BEAR PROPERTIES, LLC TO THE CITY OF DENTON AS RECORDED IN COUNTY CLERK FILE NUMBER 2011-82091 OF THE REAL PROPERTY RECORDS OF DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**COMMENCING AT THE SOUTHWEST CORNER OF THE ABOVE REFERENCED 4.02 ACRE TRACT, SOUTH 77 DEGREES 01 MINUTES 10 SECONDS EAST A DISTANCE OF 83.95 FEET TO THE POINT OF BEGINNING;**

**THENCE NORTH 00 DEGREES 08 MINUTES 57 SECONDS WEST A DISTANCE OF 323.65 FEET TO A NORTH LINE OF THE 4.02 ACRE TRACT;**

**THENCE SOUTH 89 DEGREES 18 MINUTES 16 SECONDS EAST WITH SAID NORTH A DISTANCE OF 237.11 FEET TO A POINT FOR CORNER;**

**THENCE SOUTH 01 DEGREES 00 MINUTES 53 SECONDS WEST ALONG AN EASTERN LINE OF SAID 4.02 ACRE TRACT A DISTANCE OF 2.00 FEET TO A POINT FOR CORNER;**

**THENCE SOUTH 76 DEGREES 58 MINUTES 22 SECONDS EAST ALONG A NORTH LINE OF SAID 4.02 ACRE TRACT A DISTANCE OF 192.79 FEET TO A POINT FOR CORNER;**

**THENCE SOUTH 01 DEGREES 00 MINUTES 53 SECONDS WEST ALONG AN EASTERN LINE OF SAID 4.02 ACRE TRACT A DISTANCE OF 370.51 FEET TO A POINT FOR CORNER;**

**THENCE NORTH 77 DEGREES 01 MINUTES 10 SECONDS WEST WITH THE SOUTHERLY LINE OF SAID 4.02 ACRE TRACT A DISTANCE OF 423.75 FEET TO THE POINT OF BEGINNING AND ENCLOSING 3.44 ACRES OF LAND, MORE OR LESS.**

**Exhibit “C”  
To  
Temporary License Agreement**

Zachry shall procure and carry, at its sole cost and expense during the term of this Agreement, insurance protection as hereinafter specified, in form and substance satisfactory to City, carried with an insurance company (or companies) authorized to transact business in the State of Texas, or through a program of self-insurance, covering all aspects and risks of loss of all operations in connection with this Agreement, including without limitation, the indemnity obligations set forth herein.

Zachry shall obtain and maintain the following insurance coverages in full force and effect during the term of this Agreement, either through a program of self-insurance, or with carriers as follows:

Commercial General or Excess Liability (providing coverage for premises, operations, products, and completed operations, independent contractors, contractual liability, broad form property damage coverage, and where these exposures exist, explosion, collapse or underground (XCU) exposures):

|                       |             |
|-----------------------|-------------|
| Per Occurrence Limit: | \$1,000,000 |
|-----------------------|-------------|

|                  |             |
|------------------|-------------|
| Aggregate Limit: | \$2,000,000 |
|------------------|-------------|

Business Automobile Liability (providing coverage for owned, non-owned and hired automobiles):

|                      |            |
|----------------------|------------|
| Per Occurrence Limit | \$ 500,000 |
|----------------------|------------|

|                  |             |
|------------------|-------------|
| Aggregate Limit: | \$1,000,000 |
|------------------|-------------|

Statutory Workers' Compensation Insurance:

Workers' compensation insurance coverage in accordance with the statutory requirements of the State of Texas.

Environmental Liability

Per Occurrence Limit: \$1,000,000

Aggregate Limit: \$2,000,000

The City shall be listed as an Additional Insured with respect to the Commercial General Liability and Business Automobile Liability insurance policies, and shall be granted a waiver of subrogation under both policies, as well as the Workers' Compensation coverage. These requirements shall not apply should Zachry choose to self-insure these risks. Zachry will provide a Certificate of Insurance ("Certificate") on or before the Effective Date of this Agreement to the City as evidence of coverage. The Certificate will provide 30 days notice of cancellation. A copy of the additional insured endorsement and waiver of subrogation attached to the policy, as applicable, shall be included in the Certificate.

All insurance carriers must be admitted to do business in the State of Texas and have an AM Best's Rating of A-VII or better.