



REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT (this "**Agreement**") is entered into as of 9/3/2019 (the "**Effective Date**"), by and between the City of San Leandro, a California charter city (the "**City**"), and PCC Structural, Inc. ("**PCC**"), to provide for the operation of a lighted crosswalk warning system located in the public right-of-way on Hester Street within the City. PCC and City are collectively referred to herein as the "**Parties.**"

RECITALS

A. City previously installed a marked crosswalk for improved pedestrian access between a parking lot at 415 Hester Street (APN 077A-0740-019-00) and the PCC corporate building at 414 Hester Street (APN 077A-0740-012-02).

B. Subsequent to the crosswalk installation, PCC obtained Encroachment Permit E18-0289 from the City to install permanent concrete curb ramps within the public sidewalk areas on Hester Street to accommodate disabled access between the parking lot and the corporate building using the marked crosswalk.

C. PCC now desires to install a proprietary lighted crosswalk warning system within the public right-of-way on Hester Street to further enhance pedestrian safety for travel between the parking lot and the corporate building.

D. The proprietary crosswalk warning system desired by PCC is manufactured specifically for the purpose of enhancing pedestrian safety, and is classified as a Rectangular Rapid Flashing Beacon ("RRFB") in the U.S. Department of Transportation, Federal Highway Administration, Manual on Uniform Traffic Control Devices (MUTCD), Interim Approval 21 Memorandum, dated March 20, 2018.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and PCC do hereby agree as follows:

1. License to Use. PCC, its employees, contractors, subcontractors, and agents (collectively the "PCC Parties"), for the PCC Parties' convenience, is hereby provided a nonexclusive, non-possessory, absolutely revocable license to operate an RRFB system within Hester Street to enhance the safety of pedestrians utilizing the marked crosswalk that extends between the parking lot at 415 Hester Street and PCC's corporate building at 414 Hester Street. This revocable license shall be terminated by the City upon one year's written notice to PCC. During the one-year notice period, City shall, in good faith, discuss with PCC alternative means to travel by foot between the parking lot and the corporate building. If the Parties are unable to come to an agreement of alternative means to travel by foot, then this License shall automatically terminate one year from the date of the notice.

2. Conditions of Use. PCC may utilize the public right-of-way on Hester Street to operate an RRFB system subject to the following conditions:

(a) The RRFB system to be operated by PCC must at all times comply with the current U.S. Department of Transportation, Federal Highway Administration's Manual on Uniform Traffic Control Devices. If the standards change such that the RRFB system no longer complies with the current standards, the system shall either be upgraded for conformance or removed in its entirety by PCC, to the absolute and unconditioned satisfaction of the City.

(b) PCC must comply with all applicable laws, regulations, rules, and permits pertaining to the installation, maintenance, and operation of the RRFB system including but not limited to the California Vehicle Code, the Occupational Health & Safety Act, and all applicable environmental laws, health and safety laws and regulations, whether federal, state or local. PCC hereby acknowledges that the RRFB system is available for use by members of the public who have no affiliation with PCC, and that the system may be damaged or vandalized by the public, may become damaged or inoperable through normal wear-and-tear or by malicious act. The City has no ability or obligation to deter this behavior beyond the services normally offered by its Police Department.

(c) PCC shall be liable for any damage to Hester Street or other adjacent property owned or operated by the City as public right-of-way that occurs as a result of this Agreement and operation of the RRFB system. The City, or its employees, have no obligation to inspect, maintain, operate, or remove the RRFB system for any reason.

3. Term. The license granted in this Agreement will commence on the Effective Date and shall remain in full force and effect until terminated by the Parties (the "Term"). City may terminate this Agreement by written notice to PCC following PCC's breach of its obligations under this Agreement, but only if PCC has failed to cure such breach within fifteen (15) days of written notice from City, or such other reasonable time as determined by the City. PCC's indemnity obligations set forth in this Agreement survive termination of this Agreement for any reason.

4. Insurance. Before fully executing this Agreement, PCC, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by PCC and its agents, representatives, employees, contractors, and their subcontractors. Consistent with the following provisions, PCC shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. PCC shall maintain the insurance policies required by this section throughout the term of this Agreement. PCC shall not allow any contractor, or any subcontractor to PCC's contractor, or other entity to commence work on Hester Street until PCC has imposed upon its contractor and provided evidence satisfactory to the

City of all of the insurance at the coverages required herein, and that such insurance is in effect prior to the commencement of any work. PCC shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation.

4.1.1 General Requirements. PCC shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by PCC. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, PCC may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the City's discretion.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by PCC, its employees, agents, and subcontractors.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General Requirements. PCC, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$2,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence, combined single limit coverage. If a Commercial General Liability Insurance or an Automobile Liability Insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum Scope of Coverage. Commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad

as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, elected and appointed officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of PCC; or automobiles owned, leased, hired, or borrowed by PCC.
- c. PCC hereby agrees to waive subrogation which any insurer or contractor may require from the insured by virtue of the payment of any loss. PCC agrees to obtain any endorsements that may be necessary to effect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, PCC's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of PCC's insurance and shall not contribute with it.

4.3 All Policies Requirements.

4.3.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.3.2 Verification of Coverage. Prior to beginning any work under this Agreement, PCC shall furnish City with complete copies of all Certificates of Liability Insurance delivered to PCC by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to execution, it shall not waive PCC's obligation to provide them. The City reserves the right to review complete copies of all required insurance policies at

any time.

4.3.3 Deductibles and Self-Insured Retentions. PCC shall disclose to and obtain the written approval of City, if City so requires, for the self-insured retentions and deductibles before execution of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or PCC shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

4.3.4 Wasting Policies. No policy required by this Section 4 shall include a “wasting” policy limit (i.e. limit that is eroded by the cost of defense).

4.3.5 Endorsement Requirements. Each insurance policy required herein shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days’ prior written notice has been provided to the City.

4.3.6 Contractors. PCC shall include all contractors, subcontractors, and agents as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4 Remedies. In addition to any other remedies City may have if PCC fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, order PCC to stop work under this Agreement, or find PCC in breach until PCC demonstrates compliance with the requirements hereof and/or terminate this Agreement.

5. Indemnification. PCC agrees to indemnify, protect, defend, and hold harmless the City and its employees, officers, elected and appointed officials, and agents (collectively, the “**Indemnitees**”), from and against any and all claims, demands, liabilities, losses, damages, suits, expenses, costs, penalties or judgments, including without limitation attorneys’ fees and interest that may be claimed, brought or had against any Indemnatee, or to which any Indemnatee may be subjected and arising out of, connected with or in any way resulting from the acts or omissions of PCC or PCC’s invitees’ use of, or entry upon, the marked crosswalk between the parking lot at 415 Hester Street and PCC’s corporate building at 414 Hester Street.

6. Miscellaneous Provisions.

(a) Incorporation of Recitals. The Recitals are incorporated into the Agreement.

(b) No Real Property Interest; Revocable Interest. It is expressly understood that this Agreement is non-possessory and does not in any way grant or convey any permanent easement, lease, fee, or other interest in Hester Street to PCC. The license provided by this Agreement may be revoked at any time, as provided for herein.

(c) Waiver. No failure by either party to insist upon strict performance of any term or condition of this Agreement will constitute a waiver of such term or condition or of a breach thereof. Any such waiver must be in writing and signed by the waiving party.

(d) Modification. This Agreement may be modified only in writing, signed by the parties to this Agreement.

(e) Interpretation. This Agreement will be performed entirely within California and shall be construed in accordance with the laws of the State of California and any action to enforce the terms of this Agreement must be brought in the County of Alameda, State of California. This Agreement was jointly drafted by the parties, and as such shall not be interpreted against the other.

(f) Notices, Demands and Communications between the Parties. Any approval, disapproval, demand, document or other notice which either party may desire to give to the other party under this Agreement must be in writing and may be given by first class mail, postage prepaid, or reputable overnight delivery service or personal delivery addressed to the party to whom the notice is directed as set forth below, or at any other address as that party may later designate:

To City of San Leandro: City of San Leandro
City Hall
835 E. 14th Street
San Leandro, CA 94577
Attn: City Manager

To PCC: Attention: Facilities Engineer
PCC Structural, Inc.
414 Hester Street
San Leandro, CA 94577

PCC is obligated to notify the City upon sale or transfer of either the parking lot property at 415 Hester Street or PCC's corporate facility at 414 Hester Street such that this

agreement can be transferred to the new owner. Failure to notify the City upon transfer shall be cause for immediate termination of this License, except for any surviving clauses.

(g) Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

(h) Attorneys' Fees. In the event any proceeding or action is brought in connection with the enforcement of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, including those on appeal.

(i) Authorized Representative. Each person signing on behalf of the Parties warrants that he/she is the authorized representative of the party for whom he/she is signing and has been expressly authorized to bind that party to this Agreement and will provide proof of such authority if requested.

(j) Time is of the Essence. Time is of the essence in performing the obligations in this Agreement

(k) Counterparts. This Agreement may be executed in counterparts, all of which taken together shall be deemed one and the same Agreement.

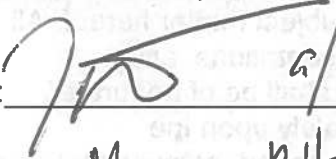
IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first set forth above.

PCC:

CITY:

PCC Structural, Inc.

CITY OF LEANDRO

By:  6/3/19
Name: MICAH Potts

By: _____
Jeff Kay, City Manager

Attest:

Approved as to Form:

Leticia Miguel, City Clerk

By: _____
PCC Attorney

Approved as to Form:

Richard D. Pio Roda, City Attorney

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