

NON-EXCLUSIVE LICENSE AND USE AGREEMENT

Date: April 21, 2015

Licensor: City of Seguin, a municipal corporation, 205 North River Street
Seguin, Guadalupe County, Texas 78155

Licensee: The Power Plant LLC, Seguin Project, Inc. and/or Lake Seguin Hydro-Electric Partners, LLC

Consideration: Ten and no/100 Dollars and other good and valuable consideration, including the Licensee's performance of its obligations under this agreement.

License Area: A route through Max Starcke Park East to the take out point near the fishing point located at the easternmost edge of Max Starcke Park East, as more particularly outlined on the attached map.

RECITALS

- A. The Licensee desires to use the banks of the Guadalupe River to operate a water amusement business wherein persons will enter the water from the grounds of the Power Plant Restaurant and exit the water at near the eastern most point of Max Starcke Park.
- B. The Licensee further desires to use City park and public roads to transport persons from a pick-up point on the east side of Starcke Park to the Power Plant Restaurant.
- C. The Licensor is willing to grant a license to the Licensee for non-exclusive use of the License Area in accordance with the terms and conditions of this Agreement.

AGREEMENT

The Licensor, for the stated consideration, hereby grants and demises to Licensee a non-exclusive license to use the License Area as outlined in the above Recitals as approved and ratified by the City Council of Seguin. The following terms and conditions shall apply to this agreement:

1. **Compliance with Standards.** The Licensee agrees to comply with all applicable City, state and federal rules and regulations, including those applicable to the operation of motor vehicles of the type contemplated by this License. Any vehicle used in conjunction with this License shall be properly licensed, maintained, inspected and insured as required by this License and the laws of the State of Texas.
2. **Maintenance.** The Licensee agrees to keep the area at the pick-up point free of trash and will insure that trash created as result of Licensee's use shall be picked up. Licensee further agrees to repair any damage to the pick-up area caused by Licensee or its patrons. Any trash clean up or repairs of damage to the areas described herein not caused by Licensee or its patrons shall not be the responsibility of Licensee.
3. **Signage.** Licensee shall post signs visible to users in the river designating the pickup point.
4. In accordance with the terms of the Hydro-Plant Lease, as amended, the gross receipts realized from this operation shall be considered as "generated and realized from business operations on the Land" for the purposes of computation of percentage rent that may be due to the City.

5. **Use Rights Granted.** Licensee is granted a right to operate a tram, or other appropriately licensed vehicles within the Park, picking up its water recreation customers at the easternmost edge of East Starke Park (the fishing point). Licensee is further granted the right to traverse a designated route through East Starcke Park from the easternmost edge of the park to the Power Plant Restaurant.

6. **Use Rights Reserved.** The Licensor reserves the right at all times, for itself and all public utilities authorized to use the public rights-of-way, to use the License Area for right-of-way and public purposes, including parking and Licensor shall assume all responsibilities for such activities.

7. **Rules for operation of recreational water activities.** Licensee has submitted rules and guidelines for the City's consideration. Licensee agrees to that any major changes to operations or rules will be submitted to the City for its consideration prior to those changes becoming operational.

8. **Term and Termination.** This License Agreement shall be effective immediately and shall run concurrently with the term of the "Hydro Plant" lease between the City of Seguin and Lake Seguin Hydro Electric Partners, LLC. The Licensor may terminate and revoke this License Agreement if the Licensee violates any term of this agreement. However, if a condition occurs that can be cured or remedied by Licensee, Licensee shall be given ten (10) days to cure any such violation and once cured the License Agreement shall not be terminated.

9. **Insurance and Indemnity.**

A. Licensee agrees to procure and maintain at its expense from a company or companies licensed to sell insurance in the State of Texas, with a Best rating of "A" or better, the following insurance policies:

- a. Workers' Compensation insurance as required by statute;
- b. Employer's Liability of \$250,000;
- c. Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; and
- d. Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage

The City shall be named as an additional insured on all polices except Workers' Compensation

B. **As a condition hereof, Licensee agrees and is bound to hold the City whole and harmless against any and all claims for damages, costs and expenses, to persons or property that may arise out of or be occasioned by the use of the above-described public property by Licensee, or from any act or omission of any representative, agent, customer, or employee of Licensee, and such indemnity provision shall cover any personal injury or damage suffered to the property specifically referenced herein, city employees, agents or officers. This agreement shall also cover any claim for damages that any utility, whether publicly or privately owned, may sustain or receive by reason of Licensee's use of said license for Licensee's improvements and equipment located thereon.**

10. **Miscellaneous.**

A. This license constitutes the entire agreement between Licensor and Licensee on this subject, and it may be amended only by written instrument executed by both parties.

B. This agreement is governed by the laws of the State of Texas. Exclusive venue for any legal dispute under this agreement is in the state court in Guadalupe County, Texas having jurisdiction over the dispute. The Licensor's execution of and performance under this agreement will not act as a waiver of any immunity of the Licensor to suit or liability under applicable law. The parties acknowledge that the Licensor, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

C. This agreement, including all duties to maintain and improve the licensed premises, shall run with the title to the Licensee's Property described in Recital A above and is binding upon Licensee's successor in title as to the Licensee's Property.

Licensor, City of Seguin,

Douglas G. Faseler, City Manager

STATE OF TEXAS §

COUNTY OF GUADALUPE §

This instrument was acknowledged before me on April ____, 2015 by Douglas G. Faseler City Manager of the City of Seguin, Texas, on behalf of the City of Seguin.

Notary Public, State of Texas

Licensee, Lake Seguin Hydro-Electric Partners, LLC

Samuel L. Panchevre, President

STATE OF TEXAS §

COUNTY OF GUADALUPE §

This instrument was acknowledged before me on April ____, 2015 by Samuel L. Panchevre, President of Lake Seguin Hydro-Electric Partners, LLC.

Notary Public, State of Texas