



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: K-1617-138

File ID: K-1617-138 **Type:** Contract **Status:** Consent Item

Version: 1 **Reference:** Item 20 **In Control:** City Council

Department: Legal Department **Cost:** **File Created:** 06/07/2017

File Name: Vintage Creek Revocable ROW License **Final Action:**

Title: CONTRACT K-1617-138: A REVOCABLE LICENSE AGREEMENT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND VINTAGE CREEK, L.L.C., IN THE AMOUNT OF \$158 PER YEAR FOR THE INSTALLATION AND MAINTENANCE OF AN ENTRANCE FEATURE IN THE FORM OF AN ARCHWAY OVER THE DRIVE INTO THE VINTAGE CREEK ADDITION, A NEW SUBDIVISION LOCATED ON THE NORTH SIDE OF TECUMSEH ROAD BETWEEN 12TH AVENUE N.E. AND PORTER AVENUE.

Notes: ACTION NEEDED: Motion to approve or reject Contract K-1617-138, a revocable license agreement with Vintage Creek, L.L.C., in the amount of \$158 per year; and, if approved, authorize the execution thereof.

ACTION TAKEN: _____

Agenda Date: 06/13/2017

Agenda Number: 20

Attachments: Vintage Creek Revocable ROW License, Exhibit A, Exhibit B

Project Manager: Leah Messner, Assistant City Attorney

Entered by: sencinias@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

Text of Legislative File K-1617-138

Body

BACKGROUND: Vintage Creek Addition is a new subdivision to be located on the north side of Tecumseh Road between 12th Ave NW and Porter Avenue.

After approval of the preliminary plat, the developer for this addition, Vintage Creek, LLC, decided that he would like to install an entrance feature in the form of an archway over the drive into the addition. Vintage Creek, LLC proposes to locate the archway within City of Norman Right-of-Way. Drawings of the proposed archway are attached.

DISCUSSION: The Department of Public Works, the Department of Utilities, the Planning Department, and the Fire Department have reviewed the proposed archway plans. Each department is comfortable with locating the archway within City of Norman Right-of-Way so long as the developer and future interest holders, i.e. the Vintage Creek Property Owners' Association, agree to follow certain conditions contained within the proposed

Revocable License.

The City of Norman executed a similar agreement with the same developer for the Fountain View Addition located on 48th Avenue NW. Prior to drafting that license, the City Attorney's Office reviewed previous agreements between the City of Norman and Coach's Brewhouse and 329 Partners LLC. These entities both lease Right-of-Way from the City of Norman to use as patio space for their restaurants (at the time of the agreements, the licenses were for Coach's Brewhouse, In the Raw Sushi, and Blackbird Gastropub). In addition, the City Attorney's Office spoke with the Edmond City Attorney and the Oklahoma City Director of Public Works to discuss how these issues are handled in their cities. In Edmond, placement of neighborhood entrance features in City of Edmond Right-of-Way is discouraged. However, when it does occur, Edmond requires a notation on the plat that would require the entrance features to be removed if the City of Edmond or other franchise holders needed access to that area. In Oklahoma City, encroachments in the Right-Of-Way require the execution of a revocable license similar to the proposed license between the City of Norman and Vintage Creek, LLC.

The attached license allows Vintage Creek, LLC to build and locate the proposed archway within City of Norman Right-of-Way along the north side of Tecumseh Road. However, it reserves the City's right, or the right of others that have City permission, to locate, relocate, or construct utilities within the area where the archway is located. In addition, under the terms of the license, the City shall incur no liability for any damages to the archway caused by any utility work.

Vintage Creek, LLC, the licensee, also agrees to pay an annual license fee of \$158 for use of the Right-of-Way. This fee is consistent with the fees paid by 329 Partners LLC for use of the City Right-of-Way in front of In the Raw Sushi and Blackbird Gastropub as well as with the fee paid for the Fountain View Addition entrance feature. All three agreements charge \$1.00/square foot. The licensee also must agree to use the Right-of-Way exclusively for the archway consistent with the plans that have been submitted. Any deviation from the approved plans may be grounds for revocation of the license.

In the license, the City reserves the right to inspect the archway. If the licensee fails to maintain it in a safe, sanitary, and sightly condition, the City may require the licensee to make repairs, or if the licensee fails to do so, the City may make repairs and charge those costs to the licensee. The licensee is also to comply with any applicable state or federal laws. The licensee agrees to indemnify, defend, and hold the City of Norman harmless for any actions of any nature arising out of any failure by Licensee to satisfy its obligations under this License; arising out of any accident or other occurrence whatsoever causing injury, including death, resulting from the use, occupancy or condition of the Right-of-Way and archway by Licensee; and arising out of any mechanic's lien or other lien, tax, assessment or charge of any kind.

Lastly, the license may be terminated for any reason at any time by either party by serving thirty days' written notice of termination upon the other party. Upon the termination of this License, Licensee shall surrender to City the possession of the Right-of-Way and shall remove the archway and restore the Right-of-Way to substantially the state in which it was prior to the construction of the archway. If the Licensee fails within thirty (30) days to make such removal or restoration, then City may remove the archway and restore the Right-of-Way to substantially the state it was in prior to construction of the archway, and the Licensee shall reimburse City for the cost so incurred. If the Licensee fails to remove the Improvements, and the City is required to remove the improvements, the City may take and hold the Improvements as its sole property.

RECOMMENDATION: If City Council wishes to allow the location of the Vintage Creek, LLC entrance features within City Rights-of-Way, Staff recommends the execution of the attached license in order to preserve the interests of the City and other franchise holders.