



# Agenda Report

**TO:** CITY COUNCIL

**DATE:** September 24, 2007

**FROM:** CITY MANAGER

**SUBJECT:** ADOPT A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO LICENSE AGREEMENTS FOR TEMPORARY SHORING WITH RESPECT TO PRIVATE DEVELOPMENTS

## **RECOMMENDATION**

It is recommended that the City Council adopt a resolution granting the City Manager authority to enter into license agreements approved as to form by the City Attorney's office for temporary shoring purposes within the public right-of-way.

## **BACKGROUND**

Many developers have incorporated subterranean parking into the design of their projects in order to meet parking requirements. Depending on the depth of the structure, temporary shoring may be required by OSHA. In many cases, developers choose to use temporary tie-backs and soldier beams for their shoring. Since developers prefer to maximize their space, this typically places the walls of the parking structure at their property lines, thus requiring the use of the public right-of-way for their temporary shoring.

For all past projects where this is the case, the city has entered into a license agreement with the property owner to allow this temporary shoring in the public right-of-way. These documents are typically boiler plate in form and have minimal changes from one property to the next. The only changes to the document are with respect to the specific location of the project, property information, ownership information, and removal requirements.

Our current process requires the applicant to first ensure, by way of a title report, that they or the City has the underlying fee title to the portion of the public right-of-way where the temporary shoring is placed. If the title information is in order, the request is routed to different agencies and utilities for their review, the licensed agreement is prepared by staff and submitted to the applicant, the applicant executes the license agreement indicating their acceptance of all terms and conditions, and then it is taken to City Council for approval where City Council

adopts the license agreement and directs the City Manager to execute the document by way of resolution.

One of the built-in terms for license agreements for temporary shoring is the automatic termination of the agreement after the temporary shoring is no longer required. This term is typically eighteen months.

Due to the number of temporary shoring agreements that are presented to the City Council on a regular basis, staff recommends that a standard form, as approved by the City Attorney's office, be approved and that the City Manager is given authority to execute the documents. All existing reviews will remain in place for the processing of this type of license agreement. The only difference will be that the City Council will not need to approve each one. An example of the proposed standard license agreement for temporary shoring is attached. Segments that are left blank will be completed based on the specific projects.

This is a significant savings on staff time for processing the document through the City Council.

**FISCAL IMPACT**

All costs for processing the License Agreement will still be paid for by the developer.

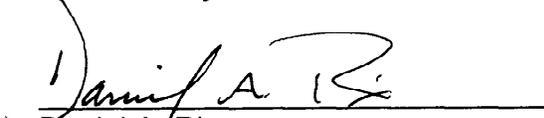
Respectfully submitted,

  
CYNTHIA J. KURTZ  
City Manager

Prepared by:

  
Bonnie L. Hopkins  
Principal Engineer

Reviewed by:

  
Daniel A. Rix  
City Engineer

Approved by:

  
Martin Pastucha, Director  
Department of Public Works

**RESOLUTION NO.**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA AUTHORIZING THE CITY MANAGER TO ENTER INTO LICENSE AGREEMENTS WITH VARIOUS DEVELOPERS FOR THE INSTALLATION OF TEMPORARY SHORING IN THE PUBLIC RIGHT-OF-WAY FOR UNDERGROUND STRUCTURES AT VARIOUS LOCATIONS WITHIN THE CITY OF PASADENA

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA

WHEREAS, the City of Pasadena is a municipal corporation which is empowered to carry out the provisions of its Charter and to perform all duties and obligations of the City as imposed by the laws of the State of California; and

WHEREAS, in order for Developers to construct underground structures, primarily subterranean parking structures, in a timely manner, it is necessary for Developers to use and occupy portions of the public right-of-way to install temporary shoring; and

WHEREAS, Developers wish to enter into License Agreements with the City which protects the public and the public's interests in this matter, and the City is willing to enter into such Agreements based upon the protections therein; and

WHEREAS, the License Agreements between Developers and the City sets forth the terms of automatic termination once the temporary shoring is no longer needed.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Pasadena that:

1. The form of License Agreement granting Developers permission to install and maintain temporary shoring along portions of the public right-of-way in the City of

Pasadena, in essentially the form attached hereto as Exhibit "A", is hereby approved; and

2. The City Manager is authorized and directed to execute and acknowledge all License Agreements of the same for and on behalf of the City, and the City Clerk is directed to attest the City Manager's signature and affix the corporate seal of the City thereto, and once fully executed in recordable form, to cause the License Agreement to be recorded in the Official Records of Los Angeles County.

Adopted at the \_\_\_\_\_ meeting of the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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JANE L. RODRIGUEZ, City Clerk

Approved as to form:



A handwritten signature in black ink, appearing to read 'Nicholas G. Rodriguez', is written over a horizontal line. To the right of the signature, the date '8/12/07' is handwritten.

Nicholas G. Rodriguez  
Assistant City Attorney

# EXHIBIT "A"

RECORDING REQUESTED BY:  
City of Pasadena

WHEN RECORDED MAIL TO  
City Clerk  
Room S228, City Hall, 100 North Garfield Avenue  
Pasadena, California 91109-7215

## SAMPLE LICENSE AGREEMENT NO.

THIS LICENSE AGREEMENT FOR TEMPORARY SHORING is entered into by the CITY OF PASADENA, a municipal corporation ("Licensor"), and \_\_\_\_\_ ("Licensee").

### RECITALS

A. Licensee is the owner of real property at \_\_\_\_\_, in the City of Pasadena, California.

B. The area subject to this License Agreement is identified as follows: A certain portion of the public right-of-way along \_\_\_\_\_ ("subject street(s)"), as described in the Legal Description (Exhibit "A"), as shown on City of Pasadena, Department of Public Works Drawing No. \_\_\_\_\_ (Exhibit "B"), on file in the office of the Director of the Department of Public Works ("Director"), and incorporated by reference ("license area").

C. Licensee desires to use and occupy the license area to install and maintain temporary shoring ("Temporary Shoring") consisting of \_\_\_\_\_ along and under the subject street(s).

D. Licensee represents and certifies that Licensee has obtained a full and current title report for the license area and that the title report discloses no interests in real property which are inconsistent with either the license or any other right, use or privilege granted by this License Agreement.

E. Licensors are willing to grant such permission, subject to certain conditions.

THEREFORE, the parties agree as follows:

**1. LICENSE**

A. Licensors grant to Licensee a license to occupy and use the license area for the above stated purpose, as shown on the above-described Department of Public Works Drawing No. \_\_\_\_\_ (Exhibit "B"), attached hereto.

B. This License Agreement shall be subject to the following conditions:

(1) The Temporary Shoring shall be installed as shown on shoring plans by \_\_\_\_\_, dated \_\_\_\_\_, consisting of \_\_\_\_\_ sheets, and as shown on City of Pasadena, Department of Public Works Drawing No. \_\_\_\_\_ (Exhibit "B") on file in the office of the Director.

(2) When the Temporary Shoring is no longer needed or within \_\_\_\_\_ months of recordation of this License Agreement, whichever comes first, all Temporary Shoring shall be relieved of all tension and stresses, and all Temporary Shoring shall be removed from the license area \_\_\_\_\_ feet below grade. All Temporary Shoring \_\_\_\_\_ feet or more below grade that remain in the public right-of-way shall be abandoned in place.

(3) Licensee shall bear the entire cost and expense of the subject installations and of the repair and restoration of the license area to its original condition.

2. **PLANS.** Licensee agrees to furnish to the Director a complete set of plans, as mentioned in paragraph 1 above, approved by a qualified licensed engineer for review of code compliance prior to the issuance of any permit therefor by Licensor. Licensee shall not occupy or use the license area until this License Agreement has been recorded and the permit is issued.

3. **PERMIT.** Licensee agrees to perform all work under permit from the Department of Public Works, in accordance with the above plans and in a manner acceptable to the Director.

4. **AS-BUILT DRAWING.** Licensee agrees to furnish the Director an "as-built" drawing within thirty (30) days after the installation of the Temporary Shoring. As-built drawings shall include the location of all Temporary Shoring that will be abandoned in place as specified in paragraph 1.B(2).

5. **ACCESS.** Licensee further agrees to place no facilities or improvements which will deny access to, or otherwise interfere with, any public utility, easement or right-of-way located within the license area. Licensee further agrees to allow Licensor reasonable access to, and maintenance of, all utilities and existing public improvements within or adjacent to the license area, including, but not limited to, pavement, trees, lighting and public utilities.

6. **TERM.** This License Agreement shall be for an indefinite term, revocable on thirty (30) days written notice if not previously terminated in the manner set forth in paragraph 14.

7. **DEFAULT.** In the event Licensee defaults by failing to fulfill any of Licensee's obligations hereunder, including the obligation to keep the license area free of waste, debris and contaminants as described herein, Licensor may declare a default and termination of this License Agreement by written notice to Licensee, which default and termination shall be effective on a

date to be stated in such notice, which date shall not be less than ten (10) days after mailing or personal service of such notice, unless such default is cured before the effective date of termination stated in such notice. This provision for a ten (10) day default notice and termination is separate from and in addition both to the provision for a thirty (30) day termination and to the provision for revocation of this License Agreement.

**8. REVOCABLE.** Either party may revoke this License Agreement, in whole or in part, at any time and for any reason, with or without cause, upon thirty (30) days' written notice regardless of the amount of money or improvements Licensee may have invested in the license area and regardless of the duration of this License Agreement.

**9. MAINTENANCE.** Licensee has inspected and accepts the license area in an "as is" condition, and shall bear the entire cost and risk of the subject installation, including, but without limitation, construction of the Temporary Shoring use. Licensee shall be solely responsible, at its sole risk and expense, to inspect, repair and maintain the license area and the Temporary Shoring, whether such repair is necessitated by the installation, repair or relocation of utilities, or by damage from tree roots, or from any cause whatsoever; to provide security as necessary; and to keep the entire license area in a state of good and safe repair, and in a safe, clean and sanitary condition at all times.

**10. ASSUMPTION OF RISK.**

A. Licensee shall inspect the license area prior to taking control thereof. Licensee shall exercise its privileges hereunder at its own risk and its own expense, assuming full responsibility for all risks incidental to the performance of this License Agreement and the use of the license area and the Temporary Shoring.

B. Licensor assumes no responsibility whatsoever for the safe condition, security or maintenance of the license area and the Temporary Shoring, nor for the protection of persons and property thereon; all such responsibility shall be solely Licensee's.

**11. INDEMNITY.**

A. Licensee agrees to indemnify, hold harmless, release and defend (even if the allegations are false, fraudulent or groundless) to the maximum extent permitted by law, Licensor, its City Council and each member thereof, and its officers, employees, Commission members and representatives from any and all liability, loss, suits, claims, damages, costs, and expenses (including attorney's fees and costs of litigation) which in whole or in part result from, or arise out of (i) any activity, use or performance by Licensee or its agents under this License Agreement, or, (ii) any activity, use or performance on, at, under, or around the license area and the Temporary Shoring by Licensee or its agents, including, but without limitation, its design or modification, its security, its condition, and its maintenance or repair or any encroachment or trespass upon any real property or any interest in real property.

B. This License Agreement to indemnify includes, but is not limited to personal injury (including death at any time) and property or other damage sustained by any person or persons (including, but not limited to, companies or corporations, Licensee and its employees or agents, and members of the general public) from any cause whatsoever, including, but not limited to, any act, error, or omission of (i) the City, its officers, agents, employees or permittees if not "active negligence", intentional tort, or willful misconduct; or, (ii) Licensee, and its employees or agents.

## 12. INSURANCE.

A. Prior to the commencement of this License Agreement, Licensee shall procure, and shall maintain in full force and effect during the term of this License Agreement, and any extension thereof, a policy of comprehensive general liability insurance, on such terms and in such amounts as are satisfactory to Licensor and written by a company approved by Licensor.

B. The policy shall include the following coverage: Comprehensive general liability insurance with minimal combined single limits of \$1,000,000 including (i) premises/operations; liability coverage, and, (ii) personal injury liability coverage.

C. The policy shall state that it affords primary coverage.

D. Licensee shall, at least fifteen (15) days prior to occupancy or performance, file with Licensor a certificate of insurance, on a City-approved form, certifying that the above insurance coverage is in effect. A certificate of insurance shall be provided by Licensee during the term of this License Agreement, or any extension thereof, which is always current. The City of Pasadena, its City Council, officers and employees shall be named as additional insured on all policies of liability insurance. All insurance policies shall bear endorsements providing that the policies cannot be canceled or modified without thirty (30) days' prior written notice. No certificate shall be approved if it contains "best effort" modifiers, or if it relieves the insurer from the responsibility to give such notice.

E. In the absence of satisfactory insurance, Licensor may, at its option, (i) procure insurance with collection rights for premiums, attorney's fees and costs against Licensee; (ii) immediately terminate this License Agreement; or (iii) self insure the risk

with all damages and costs incurred, by judgment, settlement or otherwise, including attorney's fees and costs, being collectable from Licensee.

**13. AUTHORITY.** Licensee certifies that it is properly licensed and authorized to enter into and to perform this License Agreement.

**14. AUTOMATIC TERMINATION.** This License Agreement shall automatically terminate after Licensee has abandoned the Temporary Shoring in place as specified in paragraph 1.B(2).

**15. REMOVAL.**

A. Except for termination as described in paragraph 14 above, in the event this License Agreement is revoked or terminated, Licensee will be requested, at any time, to quietly remove, at its sole expense, all Temporary Shoring from the designated license area or such part thereof as may be required by Licensor, no matter how expensive the removal may be.

B. If Licensee fails to remove the Temporary Shoring after notification by Licensor, Licensor is authorized to either bring an action in specific performance or to itself enter, and without further notice, to remove all Temporary Shoring and otherwise cause such removal, and Licensee shall reimburse Licensor for all costs so incurred by Licensor, including City staff time and time of other City employees and any outside contractors. In such case, any such unpaid costs of demolition and restoration shall be and constitute a lien upon any real property interest of Licensee in subject property.

**16. RESTORATION.**

A. When this License Agreement terminates or is terminated for any reason, Licensee shall, at its expense and upon said termination, quietly remove all Temporary Shoring from the designated area or such part thereof as may be required by Licensor, and shall, at its sole

expense, restore the license area to its original condition, as of the date the permit described in Section 3, above, was first issued, and within such period of time reasonably agreed to in writing by the Director and Licensee; however, the Temporary Shoring to be abandoned in place as specified in paragraph 1.B(2) need not be removed if they have been installed in accordance with approved plans.

B. If Licensee fails to remove the Temporary Shoring and to restore the area to its original condition, as described above, after notification by Licensor, Licensor is authorized to perform the removal and restoration work and Licensee agrees to reimburse Licensor for all costs incurred by Licensor. In such case, any such costs of restoration, and any other unpaid obligations under this License Agreement shall be and constitute a lien upon any real property interest of Licensee in subject property.

17. **WAIVER.** Licensor's waiver of one term or condition of this License Agreement is not a waiver of breach of others, nor of a subsequent breach of the one waived.

18. **TIME.** Time is of the essence in this License Agreement.

19. **SUCCESSORS.** Licensee's rights, obligations and benefits under this License Agreement shall be binding on Licensee's executors, heirs, successors and assigns.

20. **NO ESTATE.** This License Agreement provides only a right of use of temporary duration and does not give Licensee any added interest, title, estate or right of any kind or extent whatsoever, whether legal or equitable prescriptive or otherwise, in the property beyond its present ownership, no matter how much money is expended on the license area nor how long this License Agreement runs. Neither a partnership nor a joint venture is in any way intended by this License Agreement. Licensee agrees that it will not claim at any time any interest, estate or

right in the license area by virtue of this License Agreement or by virtue of Licensee's occupancy, use or expenditures under this License Agreement.

**21. ASSIGNMENT.** Licensee shall not assign or transfer this License Agreement or any rights hereunder without prior written consent of Licensor, which consent will not be unreasonably withheld. Any unauthorized assignment or transfer shall be null and void and shall constitute a material breach of this License Agreement.

**22. RECORDING.** This License Agreement shall not take effect until its recordation, at Licensee's expense, in the office of the County Recorder of Los Angeles County.

**23. CONFLICT.** Licensee certifies that no member, officer or employee of Licensee is an officer or employee of the City of Pasadena, or a member of any of its City Council, commissions or committees except to the extent permitted by law.

**24. RESTRICTION.** Licensee agrees to place no other facilities or improvements, except as herein described, within the license area.

**25. LAWS.** Licensee will comply with all Federal, State, County and City laws, which are, as amended from time to time, incorporated herein.

**26. ATTORNEY'S FEES.** If any action at law or in equity is brought to enforce or interpret the terms of this License Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

**27. INTEREST.** All sums due to Licensor shall bear interest after the date due at the sum of 10% per annum.

**28. INTERPRETATION.**

A. Applicable Law. This License Agreement, and the rights and duties of the parties hereunder (both procedural and substantive), shall be governed by and construed according to the laws of the State of California.

B. Entire Agreement. This License Agreement, including any exhibits attached hereto, constitutes the entire agreement and understanding between the parties regarding its subject matter and supersedes all prior or contemporaneous negotiations, representations, understandings, correspondence, documentation and agreements (written or oral).

C. Written Amendment. This License Agreement may be changed by written amendment signed by Licensee and the City Manager or other authorized representative of Licensor, subject to any requisite authorization by the City's City Council. Any oral representations or modifications concerning this License Agreement shall be of no force or effect.

D. Severability. If any provision in this License Agreement is held by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, such portion shall be deemed severed from this License Agreement, and the remaining provisions shall nevertheless continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this License Agreement.

**29. NON-EXCLUSIVE USE.** The use licensed herein is not exclusive and the license area remains available to the public for public use.

**30. RECORDING FEES.** Licensee shall pay all documentary transfer taxes and recording fees, and shall indemnify and defend Licensor from any and all claims for such

fees, taxes and costs. Licensor's estimate of the amount due for such taxes and fees shall be paid to Licensor upon execution of this document.

**31. NOTICE.** Notice to the Director of the Department of Public Works is required, and notice simply to the City of Pasadena or any other City department is not adequate notice. Notice to either party shall be by personal service or regular mail addressed as follows:

To Licensor: Director of the Department of Public Works  
P.O. Box 7115  
Pasadena, California 91109-7215

To Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any such notice shall be deemed to have been given upon delivery, if personally delivered, or if mailed, upon receipt or upon expiration of three (3) days from the date of posting, whichever is earlier. Either party may change the address at which it desires to receive notice upon giving written notice of such request to the other party.

**32. POSSESSORY INTEREST TAX.** In entering into this License Agreement, Licensee understands and agrees that, to the extent the interest created by this License Agreement is a possessory interest subject to property taxation, Licensee, alone, would be responsible for paying said tax.

DATED: CITY OF PASADENA

ATTEST: By: \_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved as to form: \_\_\_\_\_

\_\_\_\_\_  
Nicholas George Rodriguez  
Assistant City Attorney

STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES }

On \_\_\_\_\_ before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_

\_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

\_\_\_\_\_  
(Name, Typed or Printed)

STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES }

On \_\_\_\_\_ before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_

\_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

\_\_\_\_\_  
(Name, Typed or Printed)