

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made this _____ day of April, 2015, by and between the City of Lawrence, Kansas, a municipal corporation, and Presto Convenience Stores, LLC, a Kansas limited liability company.

RECITALS

- A.** The City of Lawrence, Douglas County, Kansas ("the City"), is the holder of those Rights of Way on which Ohio Street, Tennessee Street, and Eighth Street ("City's Rights of Way") are located in the City of Lawrence, Douglas County, Kansas;
- B.** Presto Convenience Stores, LLC, a Kansas limited liability company ("Presto"), under the direction and oversight of the Kansas Department of Health and Environment ("KDHE"), wishes to place eleven (11) monitoring wells and appurtenant facilities within the City's Rights of Way (a map showing the location of the proposed monitoring wells and appurtenant facilities is affixed hereto as Exhibit A);
- C.** The City has approved the proposed placement of eleven (11) monitoring wells and appurtenant facilities within the City's Rights of Way, contingent, among other things, upon the execution of this License Agreement and compliance with the terms of this License Agreement.

TERMS

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

- 1. Grant of License.** In exchange for the sum of one dollar and no cents (\$1.00) and for other good and valuable consideration, the City hereby grants to Presto the non-exclusive license, right, privilege, and permission ("the License") to use, in common with others, those portions of the City's Rights of Way on which the monitoring wells and appurtenant facilities will be located, as shown on Exhibit A hereto, for the purpose of monitoring and remediating soil and groundwater pursuant to its agreement with KDHE.
- 2. Presto's Covenants.** In exchange for this License, in addition to giving good and valuable consideration, Presto hereby covenants and warrants as follows:
 - (a)** To maintain the monitoring wells appurtenant facilities at Presto's sole cost and expense for the duration of the License Agreement.

- (b) To move or remove, at Presto's sole cost and expense, the monitoring wells and appurtenant facilities located in the licensed area, at the City's request or in the event that the City needs to install, repair, or maintain any utilities that may be located or are to be located in the City's Rights of Way.
 - (c) To remove or repair, upon the written notice of the City, the monitoring wells and appurtenant facilities in the event they become a hazard or are in a state of disrepair.
 - (d) To comply with all applicable laws and ordinances, including all land use requirements of the City and Douglas County, Kansas.
 - (e) To comply with all conditions placed on it by KDHE for the *Presto #25 Remedial System*.
 - (f) To refrain from causing any waste, damage, or injury to the City's Rights of Way.
 - (g) Presto shall not enlarge, intensify, or increase the proposed scope of its use or occupancy of the City's Rights of Way, as described in this License Agreement, without the prior written consent of the City.
 - (h) Presto has been indemnified and held harmless of all liability by its contractor, SCS Aquaterra Consulting Engineers, Inc. ("SCS Aquaterra"), as required by KDHE. Accordingly, Presto shall indemnify the City by virtue of SCS Aquaterra listing the City as an additional insured on its commercial insurance policy.
3. **The City Makes No Representations.** Presto agrees that the City has made no representations to it with respect to the City's Rights of Way or its condition, and that it is not relying on any representations of the City or its agents with respect to the City's Rights of Way or their condition. This License Agreement grants Presto and its contractors and subcontractors the License to use the City's Rights of Way in their present condition, "as is," without any warranties, representations, or assurances from the City.
4. **Accommodation.** The permission granted to Presto under the License Agreement is given for good and valuable consideration. However, the permission granted is also given as an accommodation to Presto and shall be made without requiring the payment of rent from Presto. Presto hereby acknowledges the City's right to the City's Rights of Way and agrees never to assail, resist, or deny such right by virtue of Presto's use or occupancy of the City's Rights of Way under this License Agreement.

5. **Indemnification.** During the time that this License Agreement is in effect, Presto agrees to indemnify, defend, save, and hold harmless the City, its officers, commissioners, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way related to Presto's use or occupancy of the City's Rights of Way or any portion thereof for the location of the monitoring well and appurtenant facilities on account of any injury to persons or damage to property. This indemnification clause shall not apply to any injury or damage caused by the City's own negligence.

6. **Termination.** The City reserves the right to terminate the permission granted by this License Agreement at any time and for any reason, by giving Presto at least thirty days written notice of such termination, except that the City may, at the City's election, terminate the permission immediately without such notice:
 - (a) If Presto fails to comply with or abide by each and all of the provisions, including Presto's Covenants, of this License Agreement;

 - (b) If Presto fails to comply with or abide by each and every condition established by the KDHE for the proposed monitoring wells as shown on Exhibit A; or

 - (c) If the continued use or occupancy of the City's Rights of Way presents a health or safety hazard.

7. **Term.** This License Agreement shall be valid for a period of three years. If neither party requests a termination of this License Agreement it shall be automatically extended for a period of three years. Any extension shall be considered a continuation of this License Agreement and shall not be a new agreement. This License Agreement will absolutely terminate when KDHE issues to Presto a no further action required letter. The parties agree that KDHE abandonment in place policy is satisfactory to close the monitoring well.

8. **Binding Effect.** This License Agreement shall, at all times, be binding upon the City and Presto and all parties claiming by, through, or under them; provided, however, that the rights, duties, and obligations of each owner of the monitoring well, and all facilities appurtenant thereto, as set forth herein, shall cease with the termination of ownership of that property, except for those duties and obligations arising during the period of said ownership.

9. **Authorization.** Each of the persons executing this License Agreement, in behalf of their respective parties, represents and warrants that they have the authority to bind the party in behalf of whom they have executed this License Agreement, and that all acts requisite to that authorization have been taken and completed.

10. **Notice.** Notice under this License Agreement, including denials, revocation, or alteration of site specific approvals, notice to remove equipment, and any other notice that may be required by this Development and License Agreement shall be provided in writing to the parties at the following addresses:

Notice to the City:
City of Lawrence, Kansas
City Manager's Office
6 East 6th Street
P.O. Box 768
Lawrence, Kansas 66044

Notice to Presto:
Presto Convenience Stores, LLC
14008 Reeder Street
Overland Park, Kansas 66221

11. **Severability.** If any section, sentence, clause, or phrase of this License Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this License Agreement.

12. **Governing Law.** This License Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the State of Kansas.

13. **Recitals.** The above-stated recitals are by reference incorporated herein and shall be as effective as if set forth herein *verbatim*.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned have caused this License Agreement to be executed as of the date noted above.

**CITY:
CITY OF LAWRENCE, KANSAS, a
municipal corporation**

DAVID L. CORLISS
City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)
) ss:
THE COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this ____ day of April, 2015, before me the undersigned, a notary public in and for the County and State aforesaid, came David L. Corliss, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My Appointment Expires:

**PRESTO:
PRESTO CONVENIENCE STORES,
LLC, a Kansas limited liability
company**

TERRY PRESTA
President

ACKNOWLEDGMENT

THE STATE OF KANSAS)
) ss:
THE COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this ____ day of April, 2015, before me the undersigned, a notary public in and for the County and State aforesaid, came Terry Presta, President of Presto Convenience Stores, LLC, a Kansas limited liability company, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My Appointment Expires: