

HAWK BEACON INSTALLATION AGREEMENT

PREAMBLE

This HAWK Beacon Installation Agreement (“Agreement”) is made by and between the City of Santa Clara, California, a chartered municipal corporation (“City”), and AN Imports of Stevens Creek, Inc., a Delaware corporation d/b/a Mini of Stevens Creek (“Mini”). City and Mini may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. City currently operates and maintains a marked crosswalk (the “Existing Crosswalk”) within the City’s boundaries on Kiely Blvd. at its intersection with Malabar Ave.; and
- B. Mini wishes to install a High-Intensity Activated Crosswalk (“HAWK”) beacon at the Existing Crosswalk; and
- C. City wishes to assist Mini in effectuating the efficient installation of a HAWK beacon at the Existing Crosswalk; and
- D. The Parties wish to memorialize the terms of their agreement relating to installation of the HAWK beacon.

City and Mini agree as follows:

AGREEMENT PROVISIONS

The Preamble and Recitals set forth above are fully restated and incorporated herein.

- 1. Terms:
 - a. Except as explicitly set forth below, all costs – including, but not limited to, all labor and materials – associated in any respect with installation of the HAWK beacon by Mini shall be borne exclusively by Mini.
 - b. Except as explicitly set forth below, Mini shall comply with all permitting and construction standards, requirements and processes of City, including, but not limited to, all requirements associated with encroachment permits.
 - c. The HAWK beacon shall be designed and installed by Mini to the City’s reasonable satisfaction, including approval by the City Engineer.
 - d. Mini shall comply with all federal, state and local laws and regulations related to the installation of the HAWK beacon.
 - e. Throughout the construction process and promptly after Mini’s completion of the installation of the HAWK beacon, City shall inspect the HAWK beacon and either (i) confirm that the HAWK Beacon has been installed in accordance with all federal, state and local laws and regulations related to the installation of the

HAWK beacon or (ii) identify and communicate to Mini in writing any reasons why the installation of the HAWK beacon does not comply with all federal, state and local laws and regulations related to the installation of the HAWK beacon. Mini agrees to use commercially reasonable efforts to address and correct any deficiencies regarding the installation of the HAWK beacon and to notify City that the HAWK beacon is ready for re-inspection. City shall then re-inspect the HAWK beacon and the process set forth in this subsection shall continue until City confirms that the HAWK beacon has been installed in accordance with all federal, state and local laws and regulations related to the installation of the HAWK beacon. City agrees that once it confirms that the HAWK beacon has been properly installed, City shall then accept the installation of the HAWK beacon and allow Mini to dedicate the HAWK beacon to City.

- f. Once City provides Mini with written acceptance of the installation of the HAWK beacon, Mini shall dedicate the HAWK beacon as well as any and all appurtenances thereto to the City, subject to the terms of section 6 below.
 - g. Mini shall use commercially reasonable efforts to assign, or cause to be assigned, to City, to the extent assignable, all third party warranties, guarantees, service agreements, and the like received by Mini related to the installation and operation of the HAWK beacon.
 - h. Mini agrees that the project described in this Agreement is subject to prevailing wage requirements, and Mini agrees to comply, or ensure compliance, with all applicable provisions of Labor Code sections 1720 through 1784 and California Code of Regulations title 8, section 16000 et seq. Mini or its contractor/subcontractor, as applicable, shall register with the Department of Industrial Relations (DIR) and provide such information to City such that City can verify the DIR registration. Mini shall require its contractors/subcontractors to be registered with the DIR, and shall include prevailing wage requirements in all contractors/subcontracts.
 - i. The City shall waive any and all fees related to the installation and operation of the HAWK beacon, including without limitation, fees associated with any encroachment permit.
2. This Agreement does not supersede, but supplements, the terms of any encroachment permit, the requirements of Chapter 12.25 of the Santa Clara City Code, and/or any other documents required for lawful installation of the HAWK beacon. In the event that there is a conflict between the provisions of this Agreement and any other agreement, the provisions of this Agreement shall control. In the event that there is a conflict between the provisions of this Agreement and any portion of the Santa Clara City Code and/or any permit-related document, the City Code and/or permit-related document shall control.
3. Mini acknowledges and agrees that its agreement to complete the installation of the HAWK beacon described in this Agreement, regardless of cost, shall not in any way whatsoever limit City's right to lawfully deny or lawfully revoke any permit granted to

Mini or in any way affect City's right to take any other lawful action.

4. This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.
5. The Parties agree that this Agreement is binding upon their respective owners, officers, employees, agents, successors in interest, parents, controlling entities, subsidiaries, and related entities.
6. For a period of twelve (12) months after City issues its written acceptance of the installation of the HAWK beacon, Mini agrees to use commercially reasonable efforts to promptly replace or correct any incomplete or defective work or materials at no further cost to City. If Mini fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Mini for the reasonable correction / replacement costs incurred by City. Following the expiration of such twelve (12) month period, City shall be solely responsible for all maintenance, repairs and replacements to the HAWK beacon. The City will not require any inspections, including weekly or monthly inspections, to be conducted by Mini during the 12 month warranty period. If City personnel observe a defect or if the City receives a complaint advising of a defect, then Mini will be informed and requested to remedy it under the warranty.
7. This Agreement may be amended or modified only by a writing signed by City and Mini.
8. This instrument, together with any other documents referenced, contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.
9. This Agreement may be executed in counterpart, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by email or facsimile, shall be sufficient to bind the Parties.
10. Notwithstanding anything to the contrary contained in this Agreement, if Mini determines, in its sole discretion, at any point prior to the start of any actual physical work at the Existing Crosswalk, that it no longer desires the install the HAWK beacon as described herein, then Mini shall provide written notice to City stating that Mini no longer desires to install the HAWK beacon and Mini shall have no obligation to install the HAWK beacon, but shall reimburse City for the full amount of the fees waived to date under paragraph 1i above. If, at any point after any actual work is performed at the Existing Crosswalk, Mini determines that it no longer desires the install the HAWK beacon as described herein, then Mini shall provide written notice to City stating that Mini no longer desires to install the HAWK beacon together with the full amount of the fees waived under paragraph 1i above and shall, upon demand, pay to the City the full value of any work by City or its contractors to complete the installation of the HAWK beacon or return the Existing Crosswalk to its pre-work condition.

11. The Parties hereto acknowledge and agree that Mini and the City have voluntarily agreed to participate in the installation of the HAWK Beacon, as described herein and, by so doing, this Agreement is not in any respect, for any purpose, to be deemed or construed to be an admission or concession of any liability or wrongdoing on the part of any person, firm or corporation whatsoever. This Agreement shall not constitute a settlement or have any other bearing upon the relative arguments or positions of the Parties in *Smee v. City of Santa Clara, et al.*, Santa Clara County Case Number 16CV294244. The Parties further agree that no evidence regarding either (a) the installation of the Hawk Beacon contemplated in this agreement and/or (b) the fact or terms of this agreement, shall be admissible in any forum adjudicating the currently pending case of *Smee v. City of Santa Clara, et al.*, Santa Clara County Case Number 16CV294244, including but not limited to any action or lien brought to enforce Mini's (and/or its insurers or administrators) rights under Labor Code sections 3852, et seq.
12. This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose Division.

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13. The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The effective date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the effective date.

**CITY OF SANTA CLARA,
CALIFORNIA**, a chartered California
municipal corporation

APPROVED AS TO FORM:

Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

AN IMPORTS OF STEVENS CREEK, INC.,
a Delaware corporation d/b/a Mini of Stevens Creek

Dated: (2/19/18)
By: 
(Signature of Person executing the Agreement on behalf of Mini)
Name: Charles W. Sabadash III
Title: Vice President, Corporate Real Estate Services, Facilities
Local Address: 200 SW 1st Ave., 14th Floor
Fort Lauderdale, Florida 33301
Email Address: sabadashc@autonation.com
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