

STATE OF NORTH CAROLINA
COUNTY OF WAKE

RIGHT-OF-WAY ENCROACHMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made this ____ day of _____, 20__ by _____ and between **THE CITY OF RALEIGH**, a municipal corporation existing under the laws of the State of North Carolina (the "City"), and _____ Wake County, a public body politic and corporate of the State of North Carolina, hereinafter known as "the Owner."

WITNESSETH:

WHEREAS, the City owns the public street right-of-way known as _____; and,

WHEREAS, the Owner desires, for his sole interest and convenience, to construct, maintain, and put in place _____; and,

WHEREAS, the City under the terms and conditions herein set forth, is willing to allow the above-described improvements to be made, and allow the Owner to encroach upon the above-referenced City-owned right-of-way; and,

WHEREAS, the Owner has paid to the City the applicable development fee, in addition to a four (4%) technology fee, to partially defray the administrative costs of the City.

NOW, THEREFORE, in consideration of the premises, and payment of all required fees, in hand paid receipt of which is hereby acknowledged and other consideration, the Owner hereby covenants and agrees that:

- 1) The Owner is responsible for any and all expenditure of labor or materials required in the installation, erection, repair, maintenance, or location of the above-referenced encroachment;
- 2) The Owner is responsible for any and all labor or expense which results from any and all future maintenance, repair, removal or dismantling of said encroachment required by the City in its sole discretion;
- 3) The Owner is to be fully responsible for any and all property damage or injury to or death of any person which results from any and all negligence, omission, defect in design, maintenance or workmanship created by the Owner, its agents, employees, contractors or subcontractors, or any cause of action arising out of the installation, maintenance, or location of said encroachment;

- 4) The Owner agrees to hold the City, its officers, councilors and employees harmless from any and all liability arising out of such negligence, omission, defect, or other cause of action; that it will defend the City, its officers, councilors and employees and pay all attorney fees in any and all actions brought as a result of such; and that it will indemnify the City, its officers, councilors and employees against any and all loss sustained by reason of such negligence, omission, defect, or other cause of action arising out of the planting, installation, maintenance, or location of said encroachment;
- 5) The Owner, during the life of this agreement, agrees to procure or cause to be procured from a responsible insurance carrier or carriers, authorized under the laws of the State of North Carolina, insurance in the minimum amounts of one million dollars (\$1,000,000.00) combined single limit covering full liability for any and all personal injury, property damage, or wrongful death caused by construction, maintenance, location, repair, or visual obstruction of said encroachment with the City of Raleigh being added as additional insured. Owner shall furnish the City without demand each July a certification from the insurance carrier or carriers with whom the insurance herein mentioned is carried, stating that such compensation is covered by such carrier or carriers and showing such insurance to be in full force and effect. In the event of any change in the insurance policy, Owner shall give the City thirty (30) days notice of such change. Should Owner fail to pay premiums upon said insurance, or should Owner fail to obtain said insurance, or to perform any of the agreements, terms, or conditions herein contained; the City at its option, by written notice may declare this agreement canceled and terminated and all rights acquired hereunder by Owner shall thereupon terminate, except Owner shall still be responsible for removing the encroachment from the right-of-way;
- 6) The Owner, upon completion of the encroachment, shall submit to the City as-built drawings of the encroachment showing the precise location of the encroachment, and in the case of encroachments for transmission devices, the drawing shall show all the locations of other utilities in the right-of-way;
- 7) The Owner agrees to abide by all applicable statutes and ordinances;
- 8) This Agreement shall not divest the City of any rights or interest in said right-of-way;
- 9) This Agreement shall be revocable at will by the Raleigh City Council;
- 10) This encroachment is approved under the conditions as outlined in Resolution 1996-153 adopted June 4, 1996;
- 11) The Owner shall obtain permits from the City Development Services Department prior to installation;

12) The Owner shall contact “NC One Call Center” forty-eight (48) hours prior to excavation and shall remain ten feet (10’) from existing utilities;

13) The Owner shall obtain a “Vegetation Impact Permit” from the City Parks, Recreation and Cultural Resources Department Urban Forestry Division prior to the installation of street trees;

14) This Agreement shall be binding upon and ensure to the benefit of all the parties hereto, their heirs, personal representatives, grantees, successors, and assigns;

15) All matters relating to this Agreement shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action related to the Agreement shall be Wake County Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division;

16) To the extent permitted by North Carolina law, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Contract., The parties further agree, to the extent permitted by law, to conform with the provisions and intent to City of Raleigh Ordinance 1969-889, as amended. This provision is hereby incorporated into this Agreement for the benefit of the City and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as provided by law. This provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Contract;

17) Site Specific requirements: The Owner shall comply with the following special requirements of the City: _____

All notices required herein shall be deemed given by depositing such in the United States Mail, first class, and addressed as follows:

If to City:

Development Services Department
Attention: Debbie Wyatt
P.O. Box 590
Raleigh, North Carolina 27602-0590

If to Owner:

[Signatures to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal effective the day and year first above written.

THE CITY OF RALEIGH

ATTEST:

By: _____

By: _____

Name: Ruffin L. Hall

Name: Gail G. Smith

Title: City Manager

Title: City Clerk

(Corporate Seal)

(OWNER)

ATTEST:

By: _____

By: _____

Name: Jessica Holmes

Name: Denise M. Hogan

Title: Chair, Wake County Board of Commissioners

Title: Clerk to Wake County Board

(Corporate Seal)

THIS INSTRUMENT APPROVED AS TO FORM:

City Attorney

STATE OF NORTH CAROLINA
COUNTY OF _____

INDIVIDUAL

I, _____, a Notary Public do hereby certify that
_____ personally appeared before me this day and
acknowledged the due execution of the forgoing instrument.

WITNESS my hand and official seal this _____ day
of _____, 20__.

(SEAL)

Notary Public _____

My Commission Expires: _____.

STATE OF NORTH CAROLINA
COUNTY OF _____

PARTNERSHIP (INDIVIDUAL)

I, _____, a Notary Public do hereby certify that
_____, general partner of, _____
personally appeared before me this day and acknowledged the execution of the foregoing
instrument, and that the instrument is the act and deed of the partnership.

WITNESS my hand and official seal this _____ day
of _____, 20__.

(SEAL)

Notary Public _____

My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

CORPORATE ACKNOWLEDGEMENT

This is to certify that on the ____ day of _____, 20____, before me personally came _____, with whom I am personally acquainted, who, being be me duly sworn, says that (s) he is the _____ of _____, and acknowledges on behalf of the corporation the due execution of the foregoing instrument, and that the said instrument is the act and deed of said corporation.

WITNESS my hand and official seal this _____ day of _____, 20__.

(SEAL)

Notary Public

My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

L.L.C.

I, _____, a Notary Public for said County and State, do hereby
certify that _____, (Manager or managing Member) of
_____, a Limited liability Company; personally appeared
before me this day and acknowledged the due execution of the foregoing instrument on
behalf of the company.

WITNESS my hand and official seal this _____ day
of _____, 20__.

(SEAL)

Notary Public _____

My Commission Expires: _____

ADDENDUM TO RIGHT-OF-WAY ENCROACHMENT AGREEMENT

CITY OF RALEIGH
COUNTY OF WAKE, "Owner"

The City of Raleigh acknowledges that the Owner is a public entity requesting this encroachment for the purpose of executing a governmental function. Sections 3, 4, and 5 of the Agreement are hereby deleted and replaced with the following language:

1. Section 3. The Owner is to be fully responsible for any and all property damage or injury to or death of any person which results from negligence by Owner or its employees arising out of installation, maintenance, or location of said encroachment.
2. Section 4 and 5. In lieu of the indemnification and insurance requirements set forth in Sections 4 and 5, the Owner's attached letter of self- insurance and 2003 Resolution Regarding Limited Waiver of Sovereign Immunity referenced within are accepted to replace and satisfy the requirements set forth in Sections 4 and 5 of the Covenants and Agreements in RIGHT-OF-WAY ENCROACHMENT AGREEMENT approved under the conditions as outlined in Resolution 1996-153.

THE CITY OF RALEIGH

By: _____

Name: Ruffin L. Hall

Title: City Manager

ATTEST:

By: _____

Name: Gail G. Smith

Title: City Clerk

COUNTY OF WAKE

By: _____

Name: Jessica Holmes

Title: Chair, Wake County Board of Commissioners

ATTEST:

By: _____

Name: Denise M. Hogan

Title: Clerk to the Wake County Board