

[] *State approval is necessary*

STATE OF North Carolina

LAWN IRRIGATION SYSTEM

COUNTY OF WAKE

ENCROACHMENT AGREEMENT

THIS AGREEMENT, being made this _____ day of _____, _____,

By and between _____, hereinafter known as Owner,
(name of owner)

and the City of Raleigh, North Carolina, hereinafter known as the City;

WITNESSETH:

THAT WHEREAS, THE City is the owner of the street right-of-way known as

_____; and
(Street adjacent to property)

WHEREAS, the Owner desires, for his sole interest and convenience, to maintain or construct and put in place an underground lawn watering system wholly or partially within the above described right-of-way at _____; and
(Address / Zip Code)

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

WHEREAS, the Owner has paid to the City sixty-five dollars (\$70.00) which partially defrays the administrative costs of the City; and

NOW, THEREFORE, in consideration of the premises, and \$70.00 in hand paid receipt of which is hereby acknowledged and other consideration, the Owner hereby covenants and agrees:

1. That 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 and the acquisition of all required permits;
2. That 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) That 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) That Owner agrees to hold the City, its offices, councilmen 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, councilmen 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, councilman and employees against any and all loss sustained by reason of such negligence, omission, defect, or other cause of action arising out of the installation, maintenance, or location of said encroachment;
- 5) That 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 \$300/\$500/\$300 thousand dollars 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. 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) In the event of any break, leak or rupture in the system located in the public right-of-way, the property owner shall immediately cause the same to be repaired. If, in the opinion of the City any such leak or other failure shall require immediate repair, the owner hereby authorizes the City to enter onto his property and make the necessary repair and agrees to reimburse the City for the cost of those repairs or any subsequent repairs or damage.
- 7) It is agreed that the City, its employees, contractors, subcontractors, and agents may without any notice to the Owner, his successors, heirs and assigns, may work in the above-described right-of-way, and that in the event of any damage to the encroachment, in whole or in part, owner, his successors, heirs and assigns, shall suffer such damage without any compensation whatsoever.
- 8) All notices required herein shall be deemed given by depositing such in the United States Mail, first class, and addressed to:

Inspections Department
City of Raleigh
P.O. Box 590
Raleigh, North Carolina 27602

Property Owner/Address

(PLEASE COMPLETE EXHIBIT A, ATTACHED)

- 9) That the Owner, in consideration of the signing of this Agreement hereto, their agents, officials, employees or servants will not discriminate in any manner on the basis of age, handicap, gender, race, color, creed, sexual orientation or national origin with reference to the subject matter of this contract, no matter how remote. The owner further agrees in all respects to conform with the provisions and intent of the City of Raleigh, North Carolina Ordinance No. 1969-889 as amended.

This provision being incorporated for the benefit of the City of Raleigh and its residents may be enforced as set out in said ordinances, enforcement of this provision shall be by action for specific performance, injunctive relief, or other remedy as by law provided.

This provision shall be binding on the successors and assigns of the parties hereto with reference to the subject matter of this contract.

- 10) That Owner agrees to abide by all applicable statutes and ordinances;
- 11) This Agreement shall not divest the City of any rights or interest in said right-of-way;
- 12) This Agreement shall be revocable at will by the City;
- 13) This Agreement shall be binding upon the Owner, his successors, and assigns, and shall insure to the benefit of the City and its agents;
- 14) The owner shall contact "NC One Call Center" a minimum of 48 hours prior to excavation.
- 15) The Owner shall contact the Urban Forester should tree removable or replanting be required. Tree protection measures are to be in place prior to commencement of construction. The Owner shall avoid damage to adjacent street trees and no concrete wash is to be emptied in tree area or lawns.
- 16) The designation Owner as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

IN WITNESS WHEREOF, I set my signature the day and year first above written.

SIGNATURE FOR A PRIVATE OWNER;

(Type or print name under signature)

STATE OF NORTH CAROLINA

COUNTY OF _____

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

This the _____ day of _____, 20_____.

Notary Public

(SEAL)

My Commission Expires: