

**EASEMENT ENCROACHMENT LICENSE AGREEMENT**

*Commercial*

**THIS AGREEMENT** is made and entered into by and between **THE CITY OF FORT WORTH**, a home rule municipal corporation of Tarrant County, Texas (“**City**”), acting by and through its duly authorized City Manager, its duly designated Assistant City Manager or Planning and Development Director, and [redacted] [full legal name], a [redacted] [type of entity] (“**Licensee**”), acting by and through its duly authorized [redacted] [title], owner of the real property located at [redacted], **Fort Worth, TX 76[redacted]** (“**Property**”).

**RECITALS**

WHEREAS, Licensee is the owner of certain real property situated in the City of Fort Worth, Tarrant County, Texas, more particularly described in the attached **Legal Description** of the Property; and

WHEREAS, the City has a [redacted] easement (the “**Easement**”) in the Property as shown on the map attached to this Agreement as **Exhibit “A”** and incorporated herein for all purposes; and

WHEREAS, Licensee desires to construct/place and maintain certain improvements which will encroach onto the Easement; and

WHEREAS, City will allow the encroachment under the terms and conditions as set forth in this Agreement to accommodate the needs of the Licensee.

**NOW, THEREFORE**, the City and Licensee agree as follows:

**AGREEMENT**

**1.**

City, in consideration of the payment by the Licensee of the fee set out below and covenants and agreements hereinafter contained, to be kept and performed by Licensee, hereby grants permission to Licensee to encroach upon and occupy a portion of the City’s Easement for the purpose of [redacted] (the “**Encroachment**”) as described in and at the location shown on **Exhibit “A”** but only to the extent shown thereon. Upon completion of the Encroachment, Licensee agrees to be responsible for maintaining the Encroachment within and above the Easement. Licensee shall not expand or otherwise cause the Encroachment to further infringe in or on City’s Easement beyond what is specifically described in the Exhibit(s) attached hereto.

**2.**

All construction, maintenance and operation in connection with such Encroachment, use and occupancy shall be performed in strict compliance with this Agreement and the City's Charter, Ordinances and Codes and in accordance with the directions of the Director of the Transportation and Public Works or the Director of the City's Water Department, or his or her duly authorized representative. Licensee shall submit all plans and specifications to the applicable Director or his or her duly authorized representative prior to the construction of the Encroachment. Licensee shall not commence construction of the Encroachment until receiving written approval by the Director, but such approval shall not relieve Licensee of responsibility and liability for concept, design and computation in the preparation of such plans and specifications.

3.

Upon prior written notice to Licensee, except in the case of an emergency, Licensee agrees that City may enter and utilize the referenced areas at any time for the purpose of installing, repairing, replacing, or maintaining improvements to its public facilities or utilities necessary for the health, safety and welfare of the public or for any other public purpose. City shall bear no responsibility or liability for any damage or disruption or other adverse consequences resulting from the Encroachment installed by Licensee, but City will make reasonable efforts to minimize such damage. In the event that any installation, reinstallation, relocation or repair of any existing or future utility or improvements owned by, constructed by or on behalf of the public or at public expense is made more costly by virtue of the construction, maintenance or existence of the Encroachment and use, Licensee shall pay to City an additional amount equal to such additional cost as reasonably determined by the Director of Transportation and Public Works or the Director of the Water Department, or said Director's duly authorized representative.

4.

Licensee agrees to pay to City at the time this Agreement is requested an application fee of **\$325.00** in order to defray all costs of inspection and supervision which City has incurred or will incur as a result of the construction, maintenance, inspection or management of the encroachments and uses provided for by this Agreement.

5.

The term of this Agreement shall be for **30** years, commencing on the date this Agreement is executed by City. However, this Agreement shall terminate upon Licensee's non-compliance with any of the terms of this Agreement. City shall notify Licensee in writing of the non-compliance, and if not cured within **30** days, this Agreement shall be deemed terminated, unless such non-compliance is not susceptible to cure within **30 days**, in which case this Agreement shall be deemed terminated in the event that Licensee fails to commence and take such steps as are necessary to remedy the non-compliance with **30** days after written notice specifying the same, or having so commenced, thereafter fails to proceed diligently and with continuity to remedy same.

6.

It is further understood and agreed between the parties hereto that the Easement to be used and encroached upon as described herein, is held by City as trustee for the public; that City exercises such powers over the Easement as have been delegated to it by the Constitution of the State of Texas or by the Texas Legislature; and that City cannot contract away its duty and its legislative power to control the Easement for the use and benefit of the public. It is accordingly agreed that if the governing body of City may at any time during the term hereof determine in its sole discretion to use or cause or permit the Easement to be used for any other public purpose, that does not preclude the use of the Encroachment on the Property, including but not being limited to underground, surface or overhead communication, drainage, sanitary sewerage, transmission of natural gas or electricity, or any other public purpose, whether presently contemplated or not, that the parties agree to negotiate in good faith in order to accommodate the Encroachment and the public purpose.

7.

**LICENSEE COVENANTS AND AGREES TO INDEMNIFY, AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, AND ELECTED OFFICIALS FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH, THE CONSTRUCTION, MAINTENANCE, OCCUPANCY, USE, EXISTENCE OR LOCATION OF THE ENCROACHMENT AND USES GRANTED HEREUNDER, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, ELECTED OFFICIALS, OR INVITEES OF THE CITY; AND LICENSEE HEREBY ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR SUCH CLAIMS OR SUITS. LICENSEE SHALL LIKEWISE ASSUME ALL LIABILITY AND RESPONSIBILITY AND SHALL INDEMNIFY CITY FOR ANY AND ALL INJURY OR DAMAGE TO CITY PROPERTY ARISING OUT**

**OF OR IN CONNECTION WITH THE ENCROACHMENTS AND ANY AND ALL ACTS OR OMISSIONS OF LICENSEE, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, OR INVITEES.**

**8.**

While this Agreement is in effect, Licensee agrees to furnish City with a Certificate of Insurance naming City as certificate holder, as proof that it has secured and paid for a policy of public liability insurance covering all public risks related to the proposed use and occupancy of public property as located and described in **Exhibit "A"**.

The amounts of such insurance shall be not less than

**\$1,000,000 Commercial General Liability**

with the understanding and agreement by Licensee that such insurance amounts may be revised upward at City's option and that Licensee shall so revise such amounts immediately following notice to Licensee of such requirement. Such insurance policy shall not be canceled or amended without at least **30** days prior written notice to the Building Official of the City of Fort Worth. A copy of such Certificate of Insurance is attached as **Exhibit "B"** and incorporated herein for all purposes. Licensee agrees to submit a similar Certificate of Insurance annually to City on the anniversary date of the execution of this Agreement

Licensee agrees, binds and obligates itself, its successors and assigns, to maintain and keep in force such public liability insurance at all times during the term of this Agreement and until the removal of the Encroachment and the cleaning and restoration of the Easement. All insurance coverage required herein shall include coverage of all Licensees' contractors and subcontractors.

**9.**

Licensee agrees to deposit with City when this Agreement is executed a sufficient sum of money to be used to pay necessary fees to record this Agreement in the Real Property Records of Tarrant County, Texas. After being recorded, the original shall be returned to the City Secretary of the City of Fort Worth.

**10.**

Licensee agrees to comply fully with all applicable federal, state and local laws, statutes, ordinances, codes or regulations in connection with the construction, operation and maintenance of the Encroachment and uses.

**11.**

Licensee agrees to pay promptly when due all fees, taxes or rentals provided for by this Agreement or by any federal, state or local statute, law or regulation.

**12.**

Licensee covenants and agrees that it shall operate hereunder as an independent contractor as to all rights and privileges granted hereunder and not as an officer, agent, servant or employee of City, and Licensee shall have exclusive control of and the exclusive right to control the details of its operations, and all persons performing same, and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. The doctrine of respondeat superior shall not apply as between City and Licensee, its officers, agents, servants, employees, contractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Licensee.

**13.**

Licensee agrees and acknowledges that this Agreement is solely for the purpose of permitting Licensee to construct, maintain and locate the Encroachment over or within the Easement and is not a conveyance of any right, title or interest in or to the Easement nor is it meant to convey any right to use or occupy property in which a third party may have an interest. Licensee agrees that it will obtain all necessary permissions before occupying such property.

**14.**

In any action brought by the City for the enforcement of the obligations of the Licensee, City shall be entitled to recover interest and reasonable attorney's fees.

**15.**

The parties agree that the duties and obligation contained **Sections 3 and 4** shall survive the termination of this Agreement.

**16.**

Licensee covenants and agrees that it will not assign all or any of its rights, privileges or duties under this Agreement without the written approval of City, and any attempted assignment without such written approval shall be void. In the event Licensee conveys the Property, Licensee may assign all of its rights and obligations under this Agreement to the new owner of the Property, and Licensee shall be deemed released from its duties and obligations hereunder upon City's approval in writing of such assignment, which approval shall not be unreasonably conditioned or withheld. Foreclosure by a secured lender of Licensee or assignment to a secured lender by Licensee in the event of default or otherwise shall not require City approval provided that

said lender notifies City in writing within **60** days of such foreclosure or assignment and assumes all of Licensees' rights and obligations hereunder. However, no change of ownership due to foreclosure or assignment to any secured lender of Licensee shall be effective as to City unless and until written notice of such foreclosure or assignment is provided to City.

**17.**

Any cause of action for breach of this Agreement shall be brought in Tarrant County, Texas. This Agreement shall be governed by the laws of the State of Texas.

**18.**

This Agreement shall be binding upon the parties hereto, their successors and assigns.

**SIGNATURES APPEAR ON FOLLOWING PAGE]**

**THIS AGREEMENT** may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

City

Licensee:

**CITY OF FORT WORTH**



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

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

Randle Harwood

Name: \_\_\_\_\_

Director

Title: \_\_\_\_\_

Planning and Development

Date: \_\_\_\_\_, 20\_\_

ATTEST:

Approved As To Form and Legality

\_\_\_\_\_

\_\_\_\_\_

City Secretary

Assistant City Attorney

**STATE OF TEXAS** §  
**COUNTY OF TARRANT** §

This instrument was acknowledged before me on \_\_\_\_\_, 201\_\_  
by Randall Harwood, Director of the Planning and Development Department of the City  
of Fort Worth, on behalf the City of Fort Worth.

\_\_\_\_\_  
Notary Public, State of Texas

After Recording Return to:  
Cassandra Foreman  
Planning and Development Department  
1000 Throckmorton Street  
Fort Worth TX, 76102

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ (title), known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, as the act and deed of \_\_\_\_\_, a \_\_\_\_\_, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_

**LEGAL DESCRIPTION OF THE PROPERTY**

**EXHIBIT "A"**  
**Map of Encroachment and Easement**