

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 _____, hereinafter known as the “Applicant.”

Staff Reviewer Initials	CITY OF RALEIGH INTERNAL USE ONLY
	1. This encroachment was authorized on _____ (date) by the Raleigh City Council, subject to permitting, execution of an encroachment agreement, and compliance with applicable rules, policies, ordinances, and laws.
	2. This encroachment for Collocation of Small Cell/Wireless Facilities was recommended for approval by City staff on _____ (date), in accordance with State law and local ordinances, and does not require City Council authorization.
	3. This encroachment was recommended for approval by City staff on _____ (date) and does not require City Council authorization, in accordance with the following agreement and/or authority: _____.

WITNESSETH:

WHEREAS, the City owns the public street right-of-way located at and known as:

_____.

WHEREAS, the Applicant desires, for its sole interest and convenience, to encroach within the above-referenced City-owned public street right-of-way to construct, erect, install, put into place, maintain, and/or repair (such activities within the public street right-of-way hereinafter individually and collectively referred to herein as “Work”) the following improvements and/or infrastructure:

WHEREAS, the City under the terms and conditions herein set forth, is willing to allow the above-described Work to be performed, and allow the Applicant to encroach upon the above-referenced City-owned right-of-way as provided herein.

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

- 1) The above-stated recitals are intended to be integral to this Agreement and are incorporated herein by reference as though fully set forth herein;
- 2) For purposes of this Agreement, the term “encroachment” refers to (i) said Work, (ii) the improvements and/or infrastructure permitted to be located within the City’s right-of-way referenced herein, and (iii) the use of said encroaching improvements and/or infrastructure;
- 3) The Applicant is responsible for any and all expenditure of labor and materials required for any said Work and encroachment;
- 4) The Applicant is responsible for any and all labor and expenses which result from any and all future maintenance, repair, removal or dismantling of said encroachment as required by the City in its sole discretion;
- 5) The Applicant is 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 Applicant, its agents, employees, contractors or subcontractors, and any cause of action arising out of the aforesaid Work, any encroachment, and the location of any such encroachment within the City right-of-way referenced herein;;
- 6) The Applicant 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’s 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 aforesaid Work, any encroachment, and the location of any such encroachment within the City right-of-way referenced herein;
- 7) The Applicant, 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 amount of one million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury (including death) and property damage caused by the performance of any Work, the encroachment, and/or the use of any said encroachment, with the City of Raleigh being included as additional insured as its interest may appear under this Agreement. Applicant shall furnish the City without demand each July a certificate of insurance evidencing that such insurance is in full force and effect. In the event the general liability insurance policy is modified such that it no longer meets the insurance coverage requirements of this Section 7, including limits of liability and the City to be named additional insured under such policy, then Applicant upon receipt of prior notice from its insurer(s) of such planned modification(s) to, or cancellation of, insurance coverage (the date when the modification or cancellation of the general liability insurance policy becomes effective such that Applicant no longer meets the insurance coverage requirements of this Section 7 is hereinafter

referred to as a “Modification Date”) shall give the City at least thirty (30) days’ prior written notice before the Modification Date or, if the Applicant receives less than thirty (30) days-notice of any such modification to, or cancellation of, the insurance coverage, shall give the City written notice of the same within twenty-four hours of Applicant being notified of the modification(s) to, or cancellation of, the insurance. Notwithstanding anything to the contrary contained herein, prior to the Modification Date, Applicant shall be responsible at its sole cost for (i) obtaining replacement insurance coverage that meets the insurance requirements hereof and (ii) providing City with a certificate of insurance evidencing that such replacement insurance coverage is in full force and effect. Should Applicant fail to pay premiums upon said insurance, or should Applicant fail to obtain said insurance, or to perform any of the agreements, terms, or conditions herein contained, then the City at its option, by written notice may declare this Agreement canceled and terminated and all rights acquired hereunder by Applicant shall thereupon terminate, except Applicant shall still be responsible for removing the encroachment from the right-of-way;

8) The Applicant, upon constructing, erecting, installing, or putting into place the encroachment, shall submit to the City as-built drawings of the encroachment showing the precise location of the same, and in the case of encroachments for transmission devices, the drawing shall show all the locations of other utilities in the right-of-way described herein;

9) The Applicant agrees to abide by all applicable regulations, statutes, laws, and ordinances;

10) This Agreement shall not divest the City of any rights or interest in said right-of-way;

11) This Agreement shall be revocable at will by the Raleigh City Council. In the event that the City or its contractor need to perform work within the public street right-of-way referenced herein and the encroaching improvement(s) are in conflict with such work, the City shall deliver written notice to Applicant describing the nature of the conflict, and Applicant shall, within fifteen (15) days of receipt of the notice, meet with representatives of the City to determine a plan of action to remove or alter its encroaching improvement(s). Work in accordance with the relocation and/or removal plan addressing the conflict shall be completed within a commercially reasonable time as determined by the City, and all work will be done at the Applicant’s own cost unless applicable law provides otherwise;

12) This encroachment is approved under the conditions as outlined in Resolution 1996-153 adopted June 4, 1996;

13) The Applicant shall obtain all required permits from the City and any other governmental authorities prior to performing any said Work;

14) If applicable, Applicant shall contact “NC 811” forty-eight (48) hours prior to excavation and shall ensure that the encroachment remains ten feet (10’) from existing utilities;

15) To the extent applicable, the performance of any Work and/or the use of any said encroachment shall comply with the City’s Right-of-Way Provisions, Manual on Uniform Traffic Control Devices (MUTCD), the North Carolina Building Code, as amended, and the North Carolina Underground Utility Safety and Damage Prevention Act (N.C.G.S. § 87, Art. 8a) as amended;

16) The Applicant shall obtain a “Tree Impact Permit” as may be required by the City;

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

18) 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;

19) To the extent permitted by 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 Agreement. 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 Agreement;

20) Site Specific requirements: The Applicant 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:

City of Raleigh Right-of-Way Services
P.O. Box 590, Raleigh, North Carolina, 27602-0590

If to Applicant:

[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: Michael Moore

Name: Gail G. Smith

Title: Director of Transportation

Title: City Clerk

(Corporate Seal)

NORTH CAROLINA
COUNTY OF WAKE

CITY ACKNOWLEDGEMENT

This is to certify that on the _____ day of _____, 20 _____, before me personally came Gail G. Smith, with whom I am personally acquainted, who, being by me duly sworn, says that she is the City Clerk, and Michael Moore is the Director of Transportation for the City of Raleigh, the municipal corporation described herein and which voluntarily executed the foregoing; that she knows the corporate seal of said municipal corporation; that the seal affixed to the foregoing instrument is said corporate seal, and the name of the municipal corporation was subscribed thereto by the said City Clerk and Treasurer and that the said seal was affixed, all by order of the governing body of said municipal corporation.

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

(OFFICIAL SEAL)

Notary Public: _____

My Commission expires: _____

APPLICANT

Name of Applicant: _____

The individual signing hereunder states that he/she has the right and power to do so and bind Applicant to the obligations set forth herein and above, and such individual does so warrant that he/she has such authority.

By: _____ Date: _____

Name: _____ Title: _____

Address: _____

STATE OF _____
COUNTY OF _____

CORPORATE ACKNOWLEDGEMENT

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document for the purpose stated therein and in the capacity indicated:

_____.

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

(SEAL)

Notary Public

My Commission Expires: _____