

STATE OF NORTH CAROLINA
COUNTY OF WAKE

LAWN IRRIGATION SYSTEM 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 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 maintain or construct and put in place an underground lawn watering system wholly or partially within the above described right-of-way at the following address: _____; and

WHEREAS, the City under terms and conditions herein set forth, is willing to allow the above-described improvement 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 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) 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 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, 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 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 amount of five hundred thousand dollars (\$500,000.00) 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) That Owner agrees to abide by all applicable statutes and ordinances;
- 9) This agreement shall not divest the City of any rights or interest in said right-of-way;
- 10) This Agreement shall be revocable at will by the Raleigh City Council;
- 11) This encroachment is approved under the conditions as outlined in Resolution 1996-153 adopted June 4, 1996;
- 12) The Owner shall obtain all permits required from the Development Services Department prior to installation;
- 13) The Owner shall contact "NC One Call Center" a minimum of 48 hours prior to excavation.
- 14) The Owner shall obtain a "Vegetation Impact Permit" from the City Urban Forestry prior to the installation of street trees;
- 15) This Agreement shall be binding upon the Owner, his successors, and assigns, and shall insure to the benefit of the City and its agents;
- 16) 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;
- 17) In consideration of the signing of this Agreement, 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, no matter how remote. The parties further agree in all respects 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 by law provided. This provision shall be binding on the successors and assigns of the parties with reference to the subject matter of this Agreement;
- 18) 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/Development Services
Encroachment Program
Attn.: Rene Haagen
P.O. Box 590
Raleigh, North Carolina, 27602-0590

(PLEASE COMPLETE EXHIBIT A AND NOTARY STATEMENT)

EXHIBIT A

INSTALLATION INFORMATION:

| | |
|---------------------|--|
| Address: | |
| Homeowner's Name: | |
| Company: | |
| Address of Company: | |
| Contact Person: | |
| Telephone Number: | |
| Email Address: | |

Provide a sketch showing the area of the encroachment.

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.

This the _____ day of _____, 2016.

(SEAL)

Notary Public _____

My Commission Expires: _____

SIGNATURE FOR CITY OF RALEIGH, NORTH CAROLINA

BY: _____
Noah Otto
Right-of-Way Services Manager

ATTEST:

Gail G. Smith
City Clerk and Treasurer

(CORPORATE SEAL)

NORTH CAROLINA
COUNTY OF WAKE

This is to certify that on the ____ day of _____, 2017, 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 Noah Otto a Project Engineer II for Development Services of 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, and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and official seal, this the ____ day of _____, 2017.

(OFFICIAL SEAL)

Notary Public: _____

My Commission expires: _____