

RIGHT OF WAY ENCROACHMENT AGREEMENT

CITY OF GOLDSBORO

AND

THIS AGREEMENT, made and entered into this the ____ day of _____,
by and between the City of Goldsboro, a body politic, party of the first part; and
_____, party of the second part.

WITNESSETH

THAT WHEREAS, the party of the second part desires to encroach on the right
of way of a City street as follows:

WHEREAS, it is to the material advantage of the party of the second part to
effect this encroachment, and the party of the first part in the exercise of authority
conferred upon it by law, is willing to permit the encroachment within the limits of the
right of way as indicated, subject to the conditions of this agreement;

NOW THEREFORE, IT IS AGREED that the party of the first part hereby grants
to the party of the second part the right and privilege to make this encroachment as shown
on attached plan sheet(s), specifications and special provisions which are made a part
hereof upon the following conditions, to wit:

That the said party of the second part binds and obligates himself to install and
maintain the encroaching facility in such safe and proper condition that it will not
interfere with or endanger travel upon said street, nor obstruct not interfere with the
property maintenance thereof, to reimburse the party of the first part for the cost incurred
for any repairs or maintenance to its street and structures necessary due to the installation
and existence of the facilities of the party of the second part, and if at any time the party
of the first part shall require the removal of or changes in the location of the said
facilities, that the said party of the second part binds himself, his successors and assigns,
to promptly remove or alter the said facilities, in order to conform to the said
requirement, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen and other warning devices for the protection of traffic in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and Amendments or Supplements thereto. Information as to the above rules and regulations may be obtained from the Engineering Director of the party of the first part.

That the party of the second part hereby agrees to indemnify and save harmless the party of the first part from all damages and claims for damage caused by the negligent acts or omissions of the party of the second part in the installation and maintenance of this encroachment.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such facilities, within the street rights of way limits, in carrying out its construction and maintenance operations, except as occurring from negligence on the party of the first part. The party of the second part shall not be responsible for the acts or omissions of other parties engaged by the party of the first part nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

The party of the second part is obligated to comply with applicable standards of normal engineering care in the performance of the services. That the party of the second part agrees to restore all areas disturbed during installation and maintenance to the reasonable satisfaction of the Engineering Director of the party of the first part, normal wear and tear excepted. The party of the second part agrees to exercise reasonable precautions during construction and maintenance to prevent eroding of soil; silting or pollution of the rivers, streams, lakes, reservoirs, other water impoundments, ground surfaces or other property; or pollution of the air. There shall be compliance with applicable rules and regulations of the North Carolina Division of Environmental Health and Natural Resources, Division of Land Resources, and with ordinances and regulations of Wayne County, and other official agencies relating to pollution prevention and control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover, the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet the satisfaction of the Engineering Director of the party of the first part.

That the party of the second part agrees to any inspection of the work considered to be necessary by the Engineering Director of the party of the first part.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work contained in this agreement is being performed on a completed street open to traffic; the party of the second part agrees to give written notice to the Engineering Director of the party of the first part when all work contained herein has been

completed. Unless specifically requested by the party of the first part, written notice of completion of work on street projects under construction will not be required.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun within ninety (90) days from the date of authorization by the party of the first part unless written waiver is secured by the party of the second part from the party of the first part.

Notwithstanding anything to the contrary herewithin, neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed the day and year first above written.

CITY OF GOLDSBORO

By: _____ Engineering Director

ATTEST OR WITNESS:

Second Part