

CONSENT TO ENCROACHMENT OVER CITY EASEMENT

Pursuant to Chapter 10, Article II

PW-9873C
Revised June 2020

Code of Ordinances, City of Houston, Texas

Key Map
Quadrant _____

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

WHEREAS, the undersigned (hereafter referred to as "Applicant", whether one or more), has made application to the City of Houston ("City"), as provided in Chapter 10 Article II, Code of Ordinances, City of Houston, Texas ("Article II"), for consent to build, construct or erect a building, structure, edifice or other site improvements (hereafter the "Improvements") over and across a specified City easement (the "Easement"); and

WHEREAS, Applicant is either (a) the current fee title owner of the property underlying the Easement(s) or (b) if not the fee title owner of the property underlying the Easement(s), has secured and attached hereto the notarized written consent of such fee title owner to be bound by the obligations of this agreement; and

WHEREAS, the Utility Official of Houston Public Works (the "Utility Official") has considered the impact of the Improvements upon the present and probable future uses of the Easement by the City, including the need for ingress and egress to maintain and construct the City's utilities within the Easement and the potential risk of damage to the City's utilities located within the Easement, and found that the Improvements will not materially interfere with the City's rights within the Easement, thereby approving construction or installation of the Improvements.

NOW THEREFORE, in consideration of the premises, the consent hereby granted by the City and Applicant's agreement to comply with and be bound by the terms of Article II and the terms set forth herein, City, acting solely in its capacity as the holder of the Easement(s), does hereby consent to Applicant's construction or installation of the Improvements within the Easement(s), limited specifically to the type, nature and location as shown on Applicant's attached plans and specifications, as approved by the Utility Official, and described as follows, to-wit:

{Description of Improvements}

This consent is granted by City and accepted by Applicant subject to all of the following terms and conditions, in addition to the provisions of Article II:

1. The City is acting hereby only in its capacity as the holder of the Easement and nothing herein shall be deemed or construed to grant any rights or authorize the use of the Easement contrary to the rights of the City in and to the use of such Easement, except as specifically provided herein.
2. This consent applies to the Applicant, the current fee title holder of the property, and any future fee title holders and all heirs, successors and assigns (collectively referred to herein as "Applicant Parties") for the life of the Improvements listed herein only, and in no event longer than City shall own or hold the Easement(s), and no additional encroachment of any nature whatsoever is now or hereafter authorized by this consent.
3. No material alteration to, or any expansion of, the Improvements will be made without the prior written consent of the City, which consent may be withheld with or without cause, at the City's sole discretion.
4. This consent is not a building permit and Applicant Parties must obtain any required building or other applicable permit for the Improvements from Houston Public Works.
5. If the City shall determine at any time, in its sole discretion, that it is desirable or necessary, for the purposes of properly maintaining, adding to, substituting, altering, removing, repairing or replacing any of its facilities now or hereafter located or to be located within the Easement(s), City shall require Applicant Parties to remove, relocate or alter all or a portion of the Improvements. Applicant Parties shall comply fully and immediately after being notified by the Director or his or her designee, at Applicant Parties' sole expense. In the event of an emergency, or the occurrence of other circumstances affecting the public health, safety or welfare, the City shall have the right and option to remove, relocate or alter the Improvements in connection with such emergency or occurrence, and Applicant Parties shall immediately pay to City, upon demand, any costs or expenses incurred by City in effecting such removal, relocation and/or alteration of the Improvements.

6. If Applicant Parties fails to comply with any City directive to remove, relocate or alter all or a portion of the Improvements within thirty (30) days after written demand from the Director, or his or her designee, the City shall have the right and option to perform such removal, relocation or alteration at the expense of Applicant Parties, who shall reimburse the City for all costs and expenses incurred by the City in connection therewith immediately upon demand.
7. If the construction, replacement, maintenance, operation, removal, relocation or alteration of the Improvements by Applicant Parties cause any damage to any City facilities or improvements located within the Easement(s), Applicant Parties shall pay all costs to repair or replace said City facilities or improvements immediately upon demand by the City.
8. If, in the course of maintenance and supervision of any of the City's utilities in the Easement over which the Improvements have been built or erected, it should become necessary for the City to tunnel beneath or excavate through the floor or foundation of such building, structure or edifice for the purpose of making inspections or repairs, the person owning such building, structure or edifice, shall stand and bear all of the expense and damage occasioned to such building, structure or edifice by reason of such tunneling or excavation. In addition thereto, such person shall likewise stand and bear the added cost incurred by the city in tunneling beneath or excavating through the floor or foundation of such building, structure or edifice for the purpose of making such inspections or repairs, the amount of which added cost is to be determined by the Utility Official, and such amount shall be paid promptly to the City.

Release and Indemnity of City by Applicant Parties:

- A. **Applicant hereby and on behalf of itself and its successors and assigns, releases the City, its elected and appointed officials, its predecessors, successors, assigns, legal representatives and its former, present, and future agents, servants, employees and all affiliated persons or entities (collectively, the "City") from:**
 - 1) **any and all liability for any loss or damage to the Improvements caused by, arising out of, resulting from, or related to any installation, removal, relocation or alteration thereof by the City pursuant to this consent; and/or**
 - 2) **any and all liability for any loss or damage to Applicant's structure(s) or other improvement(s) caused by, arising out of, resulting from, or related to the presence, malfunction, maintenance, addition to, or substitution of any City facilities located within the easement(s), even if the City's actual or alleged sole and/or concurrent negligence is one cause of, contributed to, or caused any such loss or damage; and**
 - 3) **any and all liabilities, claims, losses, judgments, fines, demands, damages or injuries to persons or property, costs or expenses ("claims") arising out of, related to, or touching upon this consent or any of the rights and obligations arising hereunder, including without limitation, claims caused by or arising from the alleged or actual sole and/or concurrent negligence of the City; and**
- B. **Applicant hereby, and on behalf of itself and its successors and assigns, agrees to protect, defend, indemnify, and hold the City harmless of, from, and against any and all claims, liabilities, and causes of action to which the City may become subject, whether at law or in equity, in contract or tort, under statutory or common law or pursuant to the Texas or U. S. Constitution, including without limitation, all court costs, expert witness fees, expenses, investigation expense, legal research, and all costs of appeal involving litigation, arising out of, relating to, or in any way touching upon:**
 - 1) **The granting by the City of consent for the initial erection and placement of Applicant's proposed structure(s) or other site improvement(s) to encroach over the easement(s); and/or**
 - 2) **The granting by the City of consent for the Applicant to continue to maintain and use Applicant's existing structure(s) or other site improvements presently encroaching over the easement(s); and/or**
 - 3) **The use, operation, or maintenance of Applicant's proposed structure(s) or other site improvement(s) on or about the premises on which the easement(s) are situated; and/or**
 - 4) **The continued use, operation, or maintenance of Applicant's existing structure(s) or other site improvement(s) on or about the premises on which the easement(s) are situated; and**

5) Any claim alleged or brought by any person or entity, including without limitation: Applicant's agents, servants, clients, invitees, joint venturers, heirs, successors, assigns, lessees, contractors, and/or by any other interest holders and/or royalty interest holders, against the City in connection with subparagraphs 1, 2, 3 and/or 4 above.

C. Applicant's agreement to protect, defend, indemnify, and hold the City harmless set forth herein expressly extends to any joint, concurrent, or sole negligence, as well as any and all strict, statutory, or constitutional liability of the City.

D. Upon the filing by anyone of any type of claim, cause of action, or lawsuit against the City for any type of damages arising out of incidents for which Applicant Parties may be liable pursuant to the preceding paragraphs, the City shall notify Applicant Parties of such claim, cause of action or lawsuit. In the event that the Applicant Parties do not settle or compromise such claim, cause of action or lawsuit at their own cost, then the Applicant Parties shall undertake the legal defense of claim, cause of action or lawsuit at its own cost both on behalf of itself and behalf of the City until final disposition, including all appeals. The City may participate in the legal defense of any such claim, cause of action or lawsuit and in the selection of counsel by Applicant Parties to defend against such claim, cause of actions or lawsuit. Any final judgement rendered against the City for any cause for which the Applicant Parties are liable hereunder shall be conclusive against Applicant Parties as to liability and amount upon the expiration of the time for all appeals.

E. If any part of this Consent for Encroachment is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

In consideration of the premises, the undersigned Applicant (whether one or more), being the fee title Owner(s) of the property underlying the Easement(s) described above, or acting with the knowledge and attached notarized written consent of such title Owner(s), by the acceptance and execution hereof, does hereby covenant, agree, and bind itself, its heirs, executors, administrators, successors, and assigns to comply with and be bound by all the terms and conditions of said Article II and this Consent to Encroachment Over City Easement.

ACCEPTANCE BY APPLICANT

In consideration of the premises, the undersigned Applicant (whether one or more), being either the fee title Owner(s) of the property underlying the Easement(s) described above, or acting with the knowledge and attached notarized written consent of such Owner(s), by the acceptance and execution hereof, does hereby covenant, agree, and bind itself, its heirs, executors, administrators, successors, and assigns to comply with and be bound by all the terms and conditions of said Article II and this consent.

ACCEPTED THIS _____ day of _____ 20 _____.

[Signature]

[Printed name]

[Address]

Phone _____

CORPORATION

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared _____
[name], _____ [title], of _____ [name of corporation],
a _____ [state of incorporation] corporation, 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
purpose and consideration therein expressed, in the capacity therein stated, and as the act and deed of said
corporation.

GIVEN under my hand and seal of office, this the _____ day of _____ 20_____.

Notary Public in and for The State of Texas

INDIVIDUAL

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared _____ [name],
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 purpose and consideration therein expressed.

GIVEN under my hand and seal of office, this the _____ day of _____ 20_____.

Notary Public in and for The State of Texas

INDIVIDUAL

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared _____ [name],
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 purpose and consideration therein expressed.

GIVEN under my hand and seal of office, this the _____ day of _____ 20_____.

Notary Public in and for The State of Texas

CITY OF HOUSTON
(only one signature required)

BY: _____ (Date) _____

Yvonne Forrest
Utility Official
Houston Public Works

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Yvonne Forrest, Utility Official, Houston Public Works of the City of Houston, Texas known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed and as the act and deed of the City of Houston, Texas.

GIVEN under my hand and seal of office, this the _____ day of _____ 20____.

Notary Public in and for The State of Texas

RETURN TO:

*Infrastructure and
Development Services
City of Houston
Houston Public Works
P.O. Box 2688
Houston, Texas
77252-2688*

NOTE:

*Following recordation with Harris County
Clerk, original document must be returned
to the City Houston Public Works for final
endorsement by City. This document is not
valid without Harris County Clerk's
recording code and City of Houston
endorsement below:*

Original received by _____ on

Date _____ 20__