

ENCROACHMENT AGREEMENT

_____ (insert property name)

This Encroachment Agreement sets forth the agreement (the "Agreement") between _____ (the "Owner") and the City of Kyle, Texas (the "City") regarding the Owner's construction or placement of the Improvement described in Permit No. _____ attached hereto and incorporated herein for all purpose, within the Easement described in Document No. _____, Official Public Records of Hays County, Texas (the "Easement") **[or insert other appropriate description of EASEMENT]** located on that certain property described in Exhibit A **[or insert legal description here, instead of adding exhibit]** (the "Property"). The City and any other entity with the right to use the Easement shall be referred to as the "Grantees". The City consents to the Owner constructing, installing, placing, repairing, and maintaining the Improvement within the Easement, provided that the Owner complies with the following terms and conditions:

1. This permit, if granted, is made on the express condition that the City shall be free from any and all liability resulting from its issuance, and shall be subject to all applicable provisions of Permit No. _____ and Division 2, Article II, Chapter 38 of the City of Kyle Code of Ordinances.
2. Should any damage or injury to City or Grantees' property occur as a result of the exercise of the rights herein granted, Permittee shall immediately, upon the written demand of the City or Grantees', restore such property to the condition of same on the date of the occurrence of said damage or injury at Permittee's sole cost or expense, or reimburse Grantees for the cost of repair within thirty (30) days of demand by the Grantee. The question as to whether or not any such damage or injury has been caused to the property shall be determined by the City Engineer or designee and that determination shall be final. In the event repair by the City or Grantee is necessary, Permittee shall pay and/or reimburse the City the full cost of such repairs.
3. This Agreement is expressly subject and subordinate to the present and future right of the City and the Grantees, their respective agents, employees, successors, assigns, grantees, and contractors, to construct, install, establish, maintain, use, operate, and renew any utilities facilities on, beneath, or above the surface of the Easement in accordance with the terms of the Easement. Said uses of the Easement by the City and the Grantees are permitted even though such use may substantially interfere with or destroy Permittee's use of the Easement or the Improvements. The Permittee acknowledges and understands that the Grantees' activities under the Easement may damage or destroy the Improvements. The Permittee acknowledges and agrees that the Grantees and their respective agents, employees, independent contractors, successors, and assigns, shall not be responsible for repairing or replacing the Improvements, or for compensating the Permittee for any damage caused to the Improvement by Grantees' activities under the Easement.
4. Notwithstanding any provisions in this Agreement to the contrary, the City retains the right to enter upon the licensed property, at any time and without notice, assuming no obligation to Permittee, to remove any of the licensed improvements or alterations thereof whenever such removal is deemed necessary for: (a) exercising the City's rights or duties with respect to the licensed property; (b) protecting persons or property; or (c) the public health or safety with respect to the licensed property.
5. Neither this permit nor any of the rights herein granted shall be assigned without the prior written approval of the City. The permit is void upon its expiration date. A new fee will be assessed thereafter.
6. By acceptance of this permit, Permittee acknowledges and assumes all responsibility for compliance with requirements of other regulatory agencies including but not limited to zoning regulations, applicable ordinances and laws of the City, County of Hays, the State of Texas or others having regulatory control over the work or use granted herein.
7. A copy of this permit and approved plans, if applicable, shall be maintained at the site of work and be shown to any authorized representative of the City, or other regulatory governing agency upon request.
8. The Permit and this Agreement may be immediately revoked in the best interest of the City as determined

by the City Engineer or designee, including violation of permit provisions or other applicable rules and regulations, or the creation of a nuisance after notice given by the City Engineer or designee. In the event of such revocation and termination, Permittee shall immediately cease all operations, remove the Improvement, and restore the Easement as directed by the City inspector.

9. No uses or Improvements other than that as stated on the Permit are permitted in the Easement.
10. No Permit shall be approved for encroachment onto any City property for any purpose whatsoever unless the applicant provides proof of insurance coverage for bodily injury and property damage in a form and in an amount acceptable to the City Manager. The City Manager may waive the requirements of this section if he/she determines that the proposed encroachment will not constitute any significant possibility of City liability
11. Permittee shall, at its sole expense, provide a commercial general liability insurance policy, written by a company acceptable to the City and licensed to do business in Texas, with a combined single limit of not less than \$600,000.00, which coverage may be provided in the form of a rider and/or endorsement to a previously existing insurance policy. Such insurance coverage shall include the City as an additional-insured. This insurance coverage shall cover all perils arising from the activities of Permittee, its officers, employees, agents, or contractors, relative to this Agreement, or otherwise within the public right-of-way and property within the licensed area. Permittee shall be responsible for any deductibles stated in the policy. A certificate of insurance evidencing such coverage shall be delivered to the City Secretary of the City within thirty (30) days of the effective date of this Agreement. Permittee shall not cause any insurance to be canceled nor permit any insurance to lapse, All insurance certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or otherwise limited until forty-five (45) days after the City has received written notice as evidenced by a return receipt of registered or certified mail.
12. **INDEMNIFICATION. Permittee shall indemnify, defend, and hold harmless the City and its officers, agents and employees against all claims, suits, demands, judgments, expenses, including attorney's fees, or other liability for personal injury, death, or damage to any person or property which arises from or is in any manner caused by the Permittee's construction, removal or maintenance of the Improvements or use of the Easement. This indemnification provision, however shall not apply to any claims, suits, damage, costs, losses, or expenses arising solely from the negligent or willful acts of the City; provided that for the purposes of the foregoing, the City's act of entering into this Agreement shall not be deemed to be a "negligent or willful act."**
13. In the event that Permittee fails to comply with the terms or conditions as set forth herein, then the City shall give Permittee written notice thereof, by registered or certified mail, return receipt requested, to the address set forth below. Permittee shall have thirty (30) days from the date of receipt of such notice to take action to remedy the failure complained of, and, if Permittee does not satisfactorily remedy the same within the thirty (30) day period, the City may terminate this Agreement and/or require removal of the Improvements at the Permittee's expense, and in such event, the Permittee shall remove the Improvements within thirty (30) days of written notice to remove such Improvements from the City.
14. Termination by Permittee. This Agreement may be terminated by Permittee by delivering written notice of termination to the City not later than thirty (30) days before the effective date of termination. If Permittee so terminates, then it shall remove all Improvements, that it made from the Easement within the thirty day notice period at its sole cost and expense. Failure to do so shall constitute a default under this Agreement.
15. Termination by City. Subject to prior written notification to Permittee or its successor-in-interest, this Agreement is revocable by the City if: the Improvements, or a portion of them, interfere with the City's or Grantees' use of the Easement; use of the Easement where the Improvements are located becomes necessary for a public purpose; the Improvement, or a portion of them, constitute a danger to the public which the City deems not be remediable by alteration or maintenance of such Improvements; despite thirty (30) days written notice to Permittee, maintenance or alteration necessary to alleviate a danger to the public has not been made; or Permittee fails to comply with the terms and conditions of this Agreement including, but not limited to any insurance requirements specified herein.
16. This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement. Venue for all lawsuits

concerning this Agreement will be in the court of competent jurisdiction located in Hays County, Texas.

17. This Agreement and all of the covenants herein shall run with the land; therefore, the conditions set forth herein shall inure to and bind each party's successors and assigns. Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

STATEMENT OF ACCEPTANCE OF THE CONDITIONS FOR ISSUANCE OF THE ENCROACHMENT PERMIT: I have read and understand each of the conditions set forth for issuance of the encroachment permit and on behalf of _____, and being duly authorized to do so I accept the encroachment permit subject to these conditions.

Permittee:

City of Kyle:

(Signature)

(Signature)

Date

Print Name

Print Name

Date

Address:

Address:

