

NORTH CAROLINA

**ENCROACHMENT
AGREEMENT**

GUILFORD COUNTY

THIS AGREEMENT, made and entered into this _____ day of _____ 2015, by and between the CITY OF GREENSBORO, "Grantor", and the UNIVERSITY OF NORTH CAROLINA AT GREENSBORO, "Grantee".

WITNESETH:

THAT WHEREAS, Grantee desires to install the following beneath City right-of-way and has requested permission to encroach into City street right-of-way, said encroachment to be in the nature of a limited license agreement for the underground installation of the following: 2 - 8" hot water lines (95 LF ea.); 2 – 10" chilled water lines (95 LF ea.); emergency power duct bank (40 LF); telecom duct bank (40 LF); electrical service duct bank (40 LF); 1 - 6" fire service pipe (40 LF); 1 – 4" domestic water service pipe (40 LF); 1 – 4" natural gas service line (40 LF) to extend private services from the Central Utility Building (CUB) crossing beneath the 800 block of Neal Street to serve the new Student Recreation Center (SRC) on the east side of Neal Street and 1 – 8" sanitary sewer line (45 LF) to connect to the existing sanitary sewer manhole at the intersection of Neal / Haywood Streets. Linear footage to be installed in City street right-of-way totals 665 linear feet as seen on Exhibit A and B;

WHEREAS, the installation is not intended to benefit any further resale of the property, as an income producing line, or for use apart from the business of Grantee, the installation shall not be sold, transferred or leased to any other person;

WHEREAS, Grantee shall be sole responsible for maintenance of all utilities mentioned above;

WHEREAS, Grantee shall be responsible for the removal of the installation in accordance with City standards at the request of the City or in the event of the end of the need for the installation; and

WHEREAS, Grantee agrees to maintain the encroachment in a safe condition and agrees, to the extent permitted by applicable law and without waiving sovereign immunity, to hold the City of Greensboro harmless from any and all loss, claims, actions, suits demands or liabilities of any nature to persons or property arising out of or due to any act or omission related to the construction, location and maintenance of the installation located in street right-of-way;

NOW, THEREFORE, IT IS AGREED that the Grantor hereby grants to the Grantee the limited right and privilege to encroach on the property of the Grantor within the above defined limits upon the following conditions:

1. Grantee guarantees that the installation will neither cause a public nuisance nor unreasonably interfere with the use of streets and sidewalks by the public or public utilities;
2. Grantee shall provide all locates of Grantees infrastructure within Grantor's right of way upon request by the Grantor at no cost to the Grantor;
3. During the performance of the services under this Agreement, Grantee and its contractors, and engineers shall maintain the following insurance:

As a State Agency, The University of North Carolina at Greensboro is self-insured up to the limits of the North Carolina Tort Claims Act, N.C. Gen. Stat. § 143-291, et seq. The General Assembly has currently set those limits at \$1,000,000 per occurrence. The State has not waived its sovereign immunity beyond the limits of the Act; however, The University of North Carolina System has purchased excess liability insurance to cover the individual and personal liability of its employees up to \$10,000,000 per occurrence and \$25,000,000 annual aggregate. This coverage applies to negligent acts or omissions of State employees while acting in the course and scope of their employment.

Worker's Compensation Insurance in accordance with statute requirements and Employer's Liability Insurance with limits of not less than \$100,000 for each occurrence. In case any work is sublet under this Agreement, Grantee shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This Agreement shall be void and of no effect unless Grantee shall secure and keep in effect during the terms of this Agreement. Grantee's compliance with the provisions of the Worker's Compensation laws of the State of North Carolina.

At least thirty (30) days written notice shall be given to the Grantor prior to any cancellation, modification or non-renewal of any insurance required under this Agreement.

All project contractors shall be required to include Grantor and Grantee as additional insured on their General Liability insurance policies;


4. To the extent permitted by applicable law and without waiving sovereign immunity. Grantee hereby agrees to indemnify and save harmless the Grantor from any and all suits; actions, claims, demands, liability of any nature whatsoever arising out of the construction, location and maintenance of the installation and its structures in the street right-of-way, and shall remove any or all of the installation or its structures from the encroachment space at the request of the City, without any cost to the City. Such request shall not be arbitrary or unreasonable;
5. Grantee hereby agrees to maintain the installation in a safe condition and tag and identify all underground utilities;

6. The Grantee within thirty (30) days from the execution of this agreement, shall make arrangements to begin installation of the encroachments and will require the contractor to take necessary and reasonable precautions to protect the public from danger during the building and installing of the encroachments with the right of way of the Grantor;
7. The installation shall be constructed in accordance with approved plans and coordinated with the City's right-of-way manager, and
8. Grantee during the construction of the installation, for itself, its assignees and successors in interest, agrees that the contractor(s), with regard to the work performed by it during the construction and maintenance of the installation of the encroachment, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment.
9. Scope of Agreement: This Agreement is intended by the parties hereto to be the final expression of their Agreement and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.
10. Governing Law: This agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina, which parties agree shall be the sole and exclusive jurisdiction for any suit or cause of action based upon or arising out of this Agreement. The parties further agree that the venue for any suit or cause of action based upon or arising out of the Agreement shall be Guilford County, North Carolina. The parties agree that neither party, by agreeing to venue and jurisdiction in North Carolina, is waiving sovereign immunity or other Eleventh Amendment rights.
11. Severability: If, after the date hereof, any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future law, the remaining provisions of this Agreement shall be fully enforceable.

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

Vice Chancellor for Business Affairs, Mr. Charles Maimone

Witness: _____

This document has been reviewed by the
UNCG Office of the University Counsel and,
as amended, is determined to be in
compliance with University policies and
applicable laws.

Reviewed By _____ Date 12/19/14

Recommended:

By: _____

Engineering & Inspections Director

ATTESTED BY:

CITY OF GREENSBORO

By: _____

Deputy City Clerk

By: _____

Assistant City Manager

(This instrument has been pre-audited in the manner
by the Local Government-Budget and Fiscal Control Act)

(Approved as to form and legality)

By: _____

Finance Officer

By: _____

Assistant City Attorney

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

I, _____, a Notary Public in and for said County and State, do hereby certify that on this _____ day of _____, 2014, before me personally appeared _____, _____ of University of North Carolina at Greensboro, personally known to me, or proved to me by satisfactory evidence to be the person whose name is signed on the preceding attached record, and acknowledged to me that by authority duly given and as the act of the corporation/he signed it voluntarily for its stated purpose. _____

Notary Public

Printed Name of Notary Public

My commission expires: _____

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

I, _____, a Notary Public in and for said County and State, do hereby certify that on this _____ day of _____, 2015, before

me personally appeared _____, _____ City Clerk of the City of Greensboro, personally known to me or proved to me by satisfactory evidence to be the person whose name is signed on the preceding attached record, and acknowledged to me, signed, sealed with its seal, and attested by The City of Greensboro's _____ City Clerk.

Notary Public

Printed Name of Notary Public

My commission expires:_____