

**NORTH CAROLINA**  
**ENCROACHMENT AGREEMENT**  
**GUILFORD COUNTY**

THIS AGREEMENT, made and entered into this \_\_7th\_ day of September 2020, by and between the **CITY OF GREENSBORO, (hereinafter the City)**; and **The Sherwin-Williams Company (hereinafter Sherwin-Williams)** party of the second part.

WITNESSETH:

THAT WHEREAS, the City of Greensboro owns certain street rights of way located in Greensboro, North Carolina, and **Sherwin-Williams** has requested permission to work with the North Carolina Department of Environment and Natural Resources NC Division of Waste Management (hereinafter the "Division") to encroach into the City street rights of way, in the sidewalk, or City owned property to conduct environmental investigations. The said encroachments will be in the nature of:

- (1) Taking such soil, water and air samples as may be necessary;
- (2) Taking other actions related to the investigation of surface or subsurface conditions by installing below ground surface monitoring wells; and
- (3) Taking response actions necessary to mitigate any threat to human health or the environment related to their property.

Other conditions:

- (1) **Sherwin-Williams** shall attempt to perform any activities at the property in a manner that minimizes interference with use of the Property and that of adjoining private owners. **Sherwin-Williams** will provide 72 hour's written notice to the City's Engineering and Inspections Department, Utility Coordination, P.O. Box 3136, Greensboro, North Carolina (Tel. 336-373-2424) (Fax. 336-373-2338).
- (2) **Sherwin-Williams** agrees that the use of the Property is not intended for any use apart from the business of **Sherwin-Williams**.
- (3) On conclusion of all activities, **Sherwin-Williams**, to the extent practicable, shall restore the Property to the original condition it was in prior to any activities conducted as part of the environmental investigation. All monitoring wells will be properly abandoned in accordance with applicable laws and regulations, unless other arrangements are agreed to by the Property Owner.
- (4) **Sherwin-Williams** or its contractors shall provide the Property Owner and adjoining private owners notice prior to entering the Property for any purpose. In situations that the **Sherwin-Williams** determines to be of an emergency nature the **Sherwin-Williams** or its contractors shall have immediate access to the

Property and shall inform the City and private owners within 72 hours of entering the Property.

- (5) The City shall not willingly destroy, damage, remove, pave over or cover any monitoring wells at the site without providing prior notice to **Sherwin-Williams**, or its contractors.
- (6) **Sherwin-Williams** guarantees that the encroachment will neither cause a public nuisance nor unreasonably interfere with the use of the streets and sidewalks by the public or public utilities.
- (7) **Sherwin-Williams** Guarantees that the encroachment will neither cause a public nuisance nor unreasonably interfere with the use of streets and sidewalks by the public or public utilities.
- (8) **Sherwin-Williams** agrees to maintain the encroached upon area in a safe condition and restore the area to its original condition upon completion of activities granted in this agreement.
- (9) **Sherwin-Williams** is responsible for locating any and all utilities (Public and Private) and structures in the encroachment area and to prevent damage to the same.
- (10) **Sherwin-Williams** shall be responsible for all necessary permits and feed, both annual and job specific and all permits shall be in the name of **Sherwin-Williams**.
- (11) Termination for Convenience: The City, in its sole discretion, may terminate this Agreement in Whole or in part whenever the City determined that said termination is in its best interest. Any such termination shall be effective by the delivery to **Sherwin-Williams** of a written notice if termination thirty (30) days before the effective date of the termination.
- (12) Indemnification: Sherwin-Williams hereby agrees to indemnify and save harmless the City of Greensboro , its officers, agents, and employees against all claims, actions, lawsuits and demands, including reasonable attorney fees, made by anyone for the damages, loss, or injury of any kind, including environmental, which may arise in connection with or as a result of, work pursuant to the Agreement.
- (13) PAYMENT OF Taxes and Insurance: **Sherwin-Williams** assumes full responsibility for the payment of all assessment, payroll taxes or contributions whether State or Federal, as to all employees engaged in the performance of work under this Agreement.
- (14) Non-Discrimination Requirements: In hiring, contracting, and all other acts **Sherwin-Williams** shall abide by all local, State and federal laws and regulations relevant to Minority/Women's Business Enterprises and shall not discriminate on the basis of sex, age, race, creed, color, religion, national origin, or disability.
- (15) **Sherwin-Williams** shall obtain the following:
  - a. Workers Compensation: Coverage to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include employer's liability with a limit of \$100,000 for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury by disease policy limit.
  - b. Comprehensive General Liability: Shall have minimum limits of \$1,000,000 per occurrence combined single limit for bodily injury liability and property

damage liability. This shall include premises and/or operations, independent contractors, products and/or completed operations, broad form property damage and explosion collapse and underground damage coverage, sudden and accidental pollution losses, and a contractual liability endorsement.

- c. Commercial General Liability Policy: Shall have a minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury liability and property damage liability.

The City of Greensboro is to be named as an additional insured on this policy.

- d. Current, valid insurance policies meeting the above requirements shall be maintained for the duration of the project. Renewal policies shall be sent to the City of Greensboro thirty (30) days prior to any expiration date. There shall also be a 30 day notification to the City on the event of cancellation or modification of any stipulated insurance coverage. Policies of Insurance Accord 25 (8/84) or similar form meeting the required insurance provisions shall be forwarded to the City of Greensboro. Wording on the Policy of Insurance which states that no liability shall be imposed upon the company for failure to provide such notice is not acceptable. Original policies or certified copies of policies may be required by the City at any time.

- e. It shall be the responsibility of **Sherwin-Williams** to insure that all subcontractors comply with the insurance requirements specified above.

- (16) Hold Harmless: **Sherwin-Williams** agrees to indemnify and hold harmless the City of Greensboro from all loss, liability, claims or expense (including reasonable attorney's fees) arising from bodily injury, including death or property damage to any person or persons caused in whole or in part by negligence or willful misconduct of **Sherwin-Williams** except to the extent same are caused by negligence or misconduct of the City.
- (17) Scope of Agreement: This Agreement is intended by the parties hereto to be final expression of their Agreement and it constitutes the full and entire understanding between the parties with respect to the subject hereto, notwithstanding and representations, statements, or agreements to the contrary hereto made.
- (18) 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 this Agreement shall be Guilford County, North Carolina.

- (19) 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.
- (20) **E-Verify**  
**Sherwin-Williams** certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and that at all times during the term of this Agreement, it will continue to comply with these requirements. **Sherwin-Williams** also certifies that it will require that all of its subcontractors that perform any work pursuant to this Agreement to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Violation of this section shall be deemed a material breach of this Agreement.
- (21) **Iran Divestment Certification**  
As of the date of this Agreement, **Sherwin-Williams** certifies that it is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147- 86.55 *et. seq.* and that **Sherwin-Williams** will not utilize any subcontractor found on the State Treasurer's Final Divestment List. All individuals signing this Agreement on behalf of **Sherwin-Williams** certify that they are authorized by **Sherwin-Williams** to make this certification.
- (22) **Divestment from Companies Boycotting Israel Certification**  
As of the date of this Agreement, **Sherwin-Williams** certifies that it is not listed on the Final Divestment and Do-Not-Contract List – Restricted Companies Boycotting Israel created by the State Treasurer pursuant to N.C.G.S. 147-86.81 and that **Sherwin-Williams** will not utilize any subcontractor found on the State Treasurer's Final Divestment and Do-Not-Contract List. All individuals signing this Contract on behalf of the **Sherwin-Williams** certify that they are authorized by the **Sherwin-Williams** to make this certification.  
It is expressly agreed by the parties that this Addendum is supplemental to which this Addendum is attached, and all terms, conditions, and provisions of the original Agreement apply to this Addendum and are made a part hereof as though expressly rewritten, incorporated, and included herein. In the event of any conflict, inconsistency, or incongruity between the provisions of this Addendum and any of the provisions of the original Agreement or previous addendums, the provisions of this Addendum shall in all respects govern and control.

- (23) **Sherwin-Williams** shall also forward to the following named City Department Head all abandonment records, preliminary and final environmental reports, closure reports, and Notices and reports from DENR.

Mail to:

Dale Wyrick  
Director of Field Operations  
City of Greensboro  
P.O. Box 3136  
Greensboro, NC 27402-3136

Contact Information:

Phone: 336-373-2787

[Dale.wyrick@greensboro-nc.gov](mailto:Dale.wyrick@greensboro-nc.gov)

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.

(Corporate Seal)

Sherwin-Williams.

By: \_\_\_\_\_

By: \_\_\_\_\_

ATTESTED BY:

CITY OF GREENSBORO

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Manager

Recommended:

By: \_\_\_\_\_  
Engineering Director

Approved as to Form:

\_\_\_\_\_  
City Attorney