



THE STATE OF TEXAS §
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CITY OF TYLER, TEXAS §
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§
COUNTY OF SMITH §

CITY OF TYLER
INDEFINITE PUBLIC
RIGHT-OF-WAY EASEMENT

This Agreement is between the City of Tyler, Texas, hereinafter referred to as "City", and _____, the Grantee.

WHEREAS, the Tyler City Code in Section 17-1 allows the City Council under proper circumstances to grant an **indefinite** public right-of-way easement in return for a fee and compliance with certain requirements; and

WHEREAS, the Grantee has requested an **indefinite** public right-of-way easement as follows:

1. **Grant of Easement.**

For and in consideration of an easement fee of \$350.00 plus compliance with certain requirements, Grantee is given permission to utilize the public right-of-way, as described more fully below and as shown in **Exhibit "A."**

2. **Purpose.**

The purpose of this permission is solely to *(insert brief description of request)*

The Grantee will maintain, into perpetuity, all improvements made according to this agreement in the right-of-way at no cost to the City.

3. **Indemnity.**

TO THE EXTENT PERMITTED BY LAW, GRANTEE AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, CITY'S OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES FROM AND AGAINST ALL LIABILITY FOR ANY AND ALL CLAIMS, LIENS, SUITS, DEMANDS, AND/OR ACTIONS FOR DAMAGES, INJURIES, INJURIES TO PERSONS (INCLUDING DEATH) PROPERTY DAMAGE (INCLUDING LOSS OF USE), AND EXPENSES, INCLUDING COURT COSTS AND ATTORNEY'S FEES AND OTHER REASONABLE COST OCCASIONED BY OR FROM GRANTEE'S OCCUPANCY OR USE OF THE PREMISES DESCRIBED ABOVE AND/OR ACTIVITIES CONDUCTED IN CONNECTION WITH OR INCIDENTAL TO THIS EASEMENT AND ARISING OUT OF OR RESULTING FROM THE INTENTIONAL OR NEGLIGENT ACTS OF GRANTEE, ITS OFFICERS, AGENTS, OR EMPLOYEES, INCLUDING ALL SUCH CAUSES OF ACTION BASED ON COMMON, CONSTITUTIONAL, OR STATUTORY LAW, OR BASED IN WHOLE OR IN PART UPON THE NEGLIGENT OR INTENTIONAL ACTS OR OMISSIONS OF GRANTEE, ITS OFFICERS, AGENTS, EMPLOYEES OR VISITORS.

GRANTEE FURTHER AGREES THAT IT SHALL AT ALL TIMES EXERCISE REASONABLE PRECAUTIONS ON BEHALF OF, AND BE SOLELY RESPONSIBLE FOR, THE SAFETY OF GRANTEE'S OFFICERS, AGENTS,

EMPLOYEES, CUSTOMERS, VISITORS, AND OTHER PERSONS AS WELL AS THEIR PROPERTY WHILE IN OR UPON THE SUBJECT PREMISES. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT CITY IS NOT A PARTNER, COVENTURER, EMPLOYER OR AGENT OF GRANTEE AND THAT CITY SHALL NOT BE LIABLE OR RESPONSIBLE, IN ANY FORM OR MANNER, DIRECTLY OR INDIRECTLY, FOR THE NEGLIGENCE OF GRANTEE, GRANTEE'S AGENTS, SERVANTS, EMPLOYEES, CUSTOMERS AND VISITORS.

FURTHER, CITY ASSUMES NO RESPONSIBILITY OR LIABILITY FOR HARM, INJURY, OR ANY DAMAGING EVENTS WHICH ARE DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO PREMISES DEFECTS IN IMPROVEMENTS CONSTRUCTED BY GRANTEE WHICH MAY NOW EXIST OR WHICH MAY HERAFTER BE CONSTRUCTED BY GRANTEE, ANY AND ALL SUCH DEFECTS BEING EXPRESSLY WAIVED BY GRANTEE. GRANTEE UNDERSTANDS AND AGREES THAT THIS INDEMNITY PROVISION SHALL APPLY TO ANY AND ALL CLAIMS, SUITS, DEMANDS, AND/OR ACTIONS BASED UPON OR ARISING FROM ANY SUCH PREMISES DEFECTS OR CONDITIONS, INCLUDING BUT NOT LIMITED TO ANY SUCH CLAIM ASSERTED BY OR ON BEHALF OF GRANTEE OR ANY OF GRANTEE'S MEMBERS, AGENTS, EMPLOYEES, CUSTOMERS, OR VISITORS.

IT IS FURTHER AGREED WITH RESPECT TO THE ABOVE INDEMNITY THAT CITY AND GRANTEE WILL PROVIDE THE OTHER PROMPT AND TIMELY NOTICE OF ANY EVENT COVERED WHICH IN ANY WAY, DIRECTLY OR INDIRECTLY, CONTINGENTLY OR OTHERWISE, AFFECTS OR MIGHT ADVERSELY AFFECT GRANTEE OR CITY AND CITY SHALL HAVE THE RIGHT TO COMPROMISE AND DEFEND THE SAME TO THE EXTENT OF ITS OWN INTERESTS.

GRANTEE FURTHER AGREES THAT THIS INDEMNITY PROVISION SHALL BE CONSIDERED AS AN ADDITIONAL REMEDY FOR CITY AND NOT AS AN EXCLUSIVE REMEDY.

4. Requirements.

During the term hereof, Grantee shall maintain the above-described premises in a safe, operationally sound condition at all times and, upon termination hereof, shall restore the property to its prior condition in a manner reasonably satisfactory to the City Engineer.

5. Termination.

- a. City shall have the right to revoke or cancel this permission at any time for non-compliance with the terms and conditions hereof upon thirty (30) days written notice by certified mail to Grantee.
- b. In the event of revocation, cancellation or termination of this permission for any reason, all improvements placed on the premises by Grantee shall immediately revert to the ownership of City.
- c. In the event Grantee shall permit any City taxes assessed against it to become delinquent, and fails to cure such delinquency within ten (10) days, then all rights and privileges of Grantee under this permission agreement shall automatically cease and terminate.

6. Construction Requirements.

Grantee shall be responsible for verifying all locations of utilities involving water and sewer. Open cut construction shall be required for all construction within 10 feet of a water or sewer line that is greater than 12 inches in diameter. In the erection and placement of improvements hereunder, Grantee shall

comply with all ordinances and regulations of the City of Tyler.

7. Removal or Relocation of Improvements.

Grantee shall remove or relocate the improvements located within the area described at its own expense whenever requested to do so by City. City shall provide thirty (30) days' notice to Grantee before requiring removal or relocation of the improvements.

8. Venue.

This agreement shall be construed in accordance with the laws of the State of Texas and the ordinances of the City of Tyler. Venue for any action brought to enforce or interpret this agreement shall lie exclusively in a court of competent jurisdiction in Smith County, Texas for actions in state court, and in the Eastern District of Texas, Tyler Division, for actions in federal court.

9. Amendment.

This Agreement may be modified or amended only by writing signed by each of the parties hereto, and only upon approval of the City.

10. Notices.

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon deposit in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid, and addressed to the parties at the addresses given below (or such other address or addresses which any party may designate for itself from time to time hereafter by written notice to the other party):

CITY:

Name City of Tyler

Address

Attn: City Engineer
P.O. Box 2039
Tyler, TX 75710

Phone

(903) 531-1126

GRANTEE:

Name _____

Address

Phone

_____ - -

THIS AGREEMENT is made and entered into this _____ day of _____, A.D.
20_____.
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FOR THE CITY OF TYLER, TEXAS:

ATTEST:

By:

Edward Broussard
City Manager

By:

Cassandra Brager
City Clerk

APPROVED:

RECOMMENDED:

By:

Printed Name:
City Attorney's Office

By:

Darin Jennings
City Engineer

Council Agenda Item:

Council Approval Date:

FOR THE GRANTEE:

By:

Printed Name:

Title:

THE STATE OF TEXAS §
COUNTY OF SMITH §

GRANTEE'S ACKNOWLEDGEMENT

This instrument was acknowledged before me this _____ day of _____, 20_____, by

Notary Public In and For The State of Texas

My Commission Expires:

Notary's Printed Name

Exhibit "A."

Attach project scope and 11"X17" project plans here.

Return complete application to the City of Tyler Engineering Department:

- In person: 511 W. Locust Street, Tyler, TX 75702
- By mail: PO Box 2039, Tyler, TX 75710
- By email: RightOfPermits@tylertexas.com