

AFTER RECORDING, RETURN TO:

Thompson, O'Brien, Kappler & Nasuti, P.C.

Attn: Aaron M. Kappler, Esq.

100 Timber Trail, Suite 201

Richmond Hill, GA 31324

File No.: 7350.00000

STATE OF GEORGIA
COUNTY OF BRYAN

UTILITY ENCROACHMENT AGREEMENT

THIS UTILITY ENCROACHMENT AGREEMENT (referred to herein as the "**Agreement**") is made and entered into this _____ day of _____, 202__, **BRYAN COUNTY, GEORGIA**, a political subdivision of the State of Georgia (together with its successors and assigns, the "**County**") and _____ (together with its successors and assigns, "**Utility Provider**") (County and Utility Provider may be referred to in this Agreement, collectively, as "Parties" or, individually, as a "Party").

W I T N E S S E T H

- A. **WHEREAS**, _____ (the "**Owner**") is the fee simple owner of that certain real property located at _____, Bryan County, Georgia, Parcel Identification Number _____, and being more particularly described on Exhibit "A," attached hereto and incorporated herein for reference (the "**Property**"); and
- B. **WHEREAS**, the County is the holder of an existing utility easement (the "**County Utility Easement**") located on the Property by virtue of that certain Easement Agreement by and between the County and the Owner dated _____, recorded in Deed Book _____, Page _____, Bryan County Georgia Records, and being more particularly described in Exhibit "B," attached hereto and incorporated herein for reference (the "**County Utility Easement Area**"); and
- C. **WHEREAS**, Utility Provider desires to encroach upon the County Utility Easement to construct, maintain and repair certain utilities, namely _____ (the "**Encroachment**"); and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, Ten and No/100^{ths} Dollars (\$10.00) in hand paid and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Grant of Encroachment.** Subject to the terms of this Agreement, County hereby grants Utility Provider, its agents, employees and contractors the ability to encroach upon the County Utility Easement Area. The Encroachment upon the County Utility Easement Area consists of _____, as more particularly shown on the plat, attached hereto as Exhibit "C." The Utility Provider agrees and acknowledges the County's right and title to said easement(s) and the priority of the County's right of use and hereby agrees not to resist or assail said priority. Use of the easement area shall be at the sole risk and expense of the Utility Provider, and the County is specifically relieved of any responsibility for damage to the facilities and property of the Utility Provider resulting or occurring from the use of said easement(s) as provided herein.
2. **Rights from Owners of the Land.** Subject to the terms of this Agreement, the Utility Provider shall obtain all necessary rights from the owners of the lands crossed by the County's easement(s), including but not limited to additional easements and ingress/egress rights.
3. **Notice Regarding Encroachment Placement.** Utility Provider shall submit all plans, plats, surveys, drawings, legal descriptions and any other document of the proposed Encroachment on the County Utility Easement Area to the County at least sixty (60) days prior to initiating construction or installation of the encroaching utility upon the County Utility Easement Area. Upon receipt of such plans, the County shall retain the right to, in its sole discretion, object to or relocate the proposed Encroachment. No construction may be commenced by Utility Provider until the County provides its written consent.
4. **No Impairment of County Utilities.** The Parties understand and agree that the Encroachment shall not impair the County's utilities within the County Utility Easement Area in any way, including but not limited to the County's use of, access to, and maintenance of its utilities within the County Utility Easement Area. The Parties further understand and agree that should the Encroachment in any way impair, hinder, damage, or destroy the County's utilities, Utility Provider shall immediately indemnify the County and all of the County's employees, agents, contractors and representatives (collectively, the "**Indemnitees**") for any and all costs and expenses incurred by the County due to any action or inaction of Utility Provider in connection with this Agreement.
5. **Responsibilities of the Utility Provider.** The Utility Provider hereby agrees and covenants to perform any and all approved work within the County's easement(s) that in no way affects the validity of the County's easement(s) and shall in no way modify or restrict the use or rights of the County, its successor or assigns, in and to the area to be used. Furthermore, the Utility Provider shall:
 - a. Not construct any utilities within five (5) feet of the County's infrastructure and shall not have any vertical crossings within 24-inches of the County's infrastructure, and;
 - b. Not construct any utilities beneath any County structures, manholes, or above ground features, and;

- c. Not construct any permanent structures, manholes, poles, towers, panels/cabinets, fencing, walls, headwalls, spillways, or other similar features within the County's easement, and;
 - d. Provide at the Utility Provider's sole expense any cathodic protection systems and equipment required to provide the County's infrastructure, and;
 - e. Design all crossings as close to ninety (90) degrees as possible. Parallel occupation will only be allowed in limited case-by-case circumstances, and;
 - f. Provide and install, at the Utility Provider's sole expense, clearly visible and permanent utility markers/signs showing the location of the buried Utility Provider's facilities on each side of the easement crossing, and;
 - g. Prior to final approval of the proposed easement encroachment, coordinate with the County to expose a test-hole, via vacuum excavation or similar minimally invasive method, to locate horizontal position and depth of the existing County piping/facilities at the proposed crossing. Utility Provider shall be responsible for all local one call (811) notifications prior to any excavation activities and shall be responsible for any damage to existing utilities. Existing County utility horizontal and vertical location information collected during test-pit process shall be incorporated into the Utility Provider engineering plans for County review, and;
 - h. Incorporate in any and all of its contracts and agreements, for any work or construction done on or to said County easement(s), with any and all third persons, contractors, or subcontractors, a provision requiring said third parties, contractors, and subcontractors to indemnify and hold harmless the County, its agents and employees for any and all costs and expenses resulting from injuries (including death) to any persons or damage to any property attributed to or resulting from the construction, use or maintenance of the Utility Provider's facilities, projects, or programs conducted on said County easement(s), and;
 - i. Shall obtain all necessary licenses and permits required for work within the easement(s) and all work shall be done and all improvements constructed in a good and workmanlike manner and shall be free and clear of all liens of contractors, subcontractors, laborers and materialmen and all other liens, and;
 - j. Perform all work, and construct all improvements in accordance with all laws, ordinances, codes, rules and regulations of all governmental authorities having jurisdiction over such work, including the Bryan County Code of Ordinances.
6. **Alterations.** It is the understanding of the Parties that in the event inspections, repairs, maintenance, modifications, or similar changes (referred to in this Agreement as "**Alterations**") are necessary or prudent to ensure that the Encroachment is at all times in good and usable condition, is properly maintained, and is in compliance with all applicable laws, regulations, and ordinances, then any expenses or costs associated with, incident to, or incurred in connection with Alterations located within the County Utility Easement Area shall be incurred entirely by Utility Provider.

7. **Property Disturbance.** Any Alterations performed by Utility Provider pursuant to this Agreement shall be performed so as not to interfere with or adversely affect the rights of the County; if, due to the nature of such Alterations, this is not possible, then such Alterations shall be performed with as little inconvenience to the County as is consistent with reasonable work in progress. Additionally, upon completion of any such Alteration, Utility Provider shall restore the portions of such other Party's property which are/were disturbed to a condition equal to or greater than existed immediately prior to the commencement of Alterations and shall coordinate such Alterations and restoration work with the owner of such property.
8. **Duty to Cooperate.** The Parties agree to cooperate and work together in good faith to timely fulfill the obligations set forth in this Agreement.
9. **Waiver.** No failure of any Party to exercise any power given hereunder or to insist upon strict compliance by the other(s) with its obligations hereunder and no custom or practice of any Party at variance with the terms hereof shall constitute a waiver of any Party's right to demand exact compliance with the terms hereof.
10. **Notices.** All notices provided or required to be given under this Agreement shall be deemed to have been duly given, served and delivered if in writing and delivered personally, by courier or private service delivery, or on the third business day after deposit in the United States mail for registered or certified mail, postage prepaid, return receipt requested, to the addresses provided below:

If to the County: Bryan County
 Attn: Director of Engineering
 66 Captain Matthew Freeman Drive
 Richmond Hill, Georgia 31324

With a copy to:

Aaron M. Kappler
100 Timber Trail
Suite 201
Richmond Hill, 31324

If to Utility Provider:

11. **Rescission, Modification, Amendment.** This Agreement may not be rescinded, modified, or amended, in whole or in part, except by an instrument in writing signed by the Parties, or their successors and assigns, and no such instrument shall take effect unless and until it is recorded in the Bryan County, Georgia Records.
12. **Governing Law/Venue.** This Agreement shall be construed in accordance with the laws of the State of Georgia. The Parties irrevocably submit to the jurisdiction and venue of the Bryan County Superior Court for any and all disputes arising hereunder.
13. **Recitals and Exhibits.** The recitals contained in the beginning of this instrument and any and all Exhibits, instruments, or attachments attached hereto are incorporated herein by this reference.
14. **Owner's Consent.** The Owner expressly consents to the Encroachment as contemplated herein.

[SIGNATURES CONTAINED ON FOLLOWING PAGES]

[SIGNATURE PAGE TO ENCROACHMENT AGREEMENT - COUNTY]

IN WITNESS WHEREOF, The Parties have hereunto caused this Easement Agreement to be executed by their duly authorized representatives and their official seals to be affixed hereto, the day and year first above written.

Signed, sealed and delivered in the presence of: **BRYAN COUNTY, GEORGIA**, a political subdivision of the State of Georgia,

Witness

By: _____ (SEAL)

Name:

Notary Public
My Commission Expires:

Title:

[Notary Seal]

[SIGNATURE PAGE TO ENCROACHMENT AGREEMENT – UTILITY PROVIDER]

Signed, sealed and delivered in the presence **UTILITY PROVIDER**
of:

Witness

_____(SEAL)
[NAME]

Notary Public
My Commission Expires:

[Notary Seal]

[SIGNATURE PAGE TO ENCROACHMENT AGREEMENT – OWNER]

Signed, sealed and delivered in the presence **OWNER**
of:

_____ (SEAL)
[NAME]

Witness

Notary Public
My Commission Expires:

[Notary Seal]

EXHIBIT "A" – PROPERTY DESCRIPTION

EXHIBIT "B" – COUNTY EASEMENT

EXHIBIT "C" - ENCROACHMENT