
3 INCH AREA ABOVE – LEAVE BLANK (FOR RECORDERS OFFICE USE ONLY)

DOCUMENT TYPE: AGREEMENT

DATE OF DOCUMENT: _____

GRANTOR: CITY OF SAINT LOUIS

CITY HALL, ROOM 301

1200 MARKET STREET

ST. LOUIS, MO 63103

GRANTEE: _____

PROPERTY ADDRESS: _____

LEGAL DESCRIPTION: _____

ENCROACHMENT AGREEMENT

THIS AGREEMENT, made at St. Louis, Missouri, this _____ day of, _____ by and between _____ Party of the First Part, hereinafter referred to as the "OWNER", and the City of St. Louis acting by and through the Board of Public Service, Party of the Second Part, hereinafter referred to as the "CITY", who are each referred to individually as "Party" and collectively referred to as "Parties."

WITNESSETH:

THAT, WHEREAS, the Board of Public Service of the City of St. Louis, by virtue of the authority vested in said Board by the Charter and General Ordinances of the City authorizes the OWNER to install the earth retention system (ERS) within the CITY-owned Right-of-Way located near and/or appertain to

WHEREAS, OWNER is the legal owner of that certain real property located at _____, St. Louis, Missouri, as more particularly described in EXHIBIT 1, and incorporated herein by this reference ("Property")

WHEREAS, Owner is constructing a _____ adjacent to the City's Right-of-Way along the _____ ("Project").

WHEREAS, in conjunction with the construction of the _____ Owner intends to construct a permanent concrete retaining wall supporting embankment of the City's street(s) _____. The permanent concrete retaining wall is described in detail on EXHIBIT 2.

WHEREAS, in conjunction with the construction of the concrete retaining wall, Owner intends to use a temporary earth retention system (ERS) featuring tie-backs to support the excavation. The ERS system is described in detail on EXHIBIT 3.

WHEREAS, the installation of the ERS requires permanent encroachment into the City's Right-of-Way adjacent to the Property. Extent of the encroachment is described in detail on EXHIBIT 4.

WHEREAS, City and Owner desire to enter into this Agreement to set forth the Owner's obligations regarding the temporary earth retention system components to be abandoned in place.

WHEREAS, City and Owner understand and agree that the paragraphs above are not mere recitals, but are a substantive and meaningful part of this Agreement.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Owner hereby agree as follows:

1. City authorizes the Owner to perform its excavation and shoring work, including installation of the temporary earth retention system beneath the roadway and within

the City's Right-of-Way in accordance with plans and specifications for such work as approved by the City.

2. All concrete footings or portions of soldier beams and concrete encasement within the public Right-of-Way shall be removed to a depth of 5 feet below the finished surface grade.
3. No construction material will be stored in the public right-of-way.
4. A minimum 3 ft. clearance shall be maintained between the temporary earth retention system components and the existing underground utility lines at all times.
5. Owner agrees and acknowledges that the City may, from time to time, perform work and maintenance within the City's Right-of-Way at a depth that would be impacted by the temporary earth retention system and may require partial or complete removal of its components.
6. Owner shall remain responsible for removing the ERS components or reimbursing the City for the cost of the removal, should the removal be required for the City to perform work within the Right-of-Way.
7. In the event of measurable settlement, cracking, or other damage to the Right-of-Way in any material respect resulting from the ERS installation or removal, Owner shall immediately cease performing its work until such time as the City and Owner mutually agree upon a strategy of repairs to prevent any further material damage. Owner shall be responsible for payment of all City costs reasonably incurred to oversee such repairs, including costs of consultants and staff time.
8. As a material part of the consideration for entering into this Agreement, to the fullest extent provided by law, Owner assumes all risk of the earth retention system, and Owner, for itself, its assigns, and successors in interest and assigns, hereby fully waives, releases and discharges the City from any and all claims, liens, demands, causes of action, actions, debts, damages and liabilities, including attorneys' fees and costs, resulting from the damage to, removal or movement of the Earth Retention system or the presence of the Earth Retention System within the Right-of-Way resulting from work performed in the Right-of-Way by the City or its employees or contractors
9. **As consideration for this Agreement, Owner shall pay the sum of**

[product of total length of ERS and unit cost of \$125 per lineal foot]

10. At all times during the construction of the temporary earth retention system and after completion of the permanent retaining wall the Owner shall carry a minimum policy of commercial general liability insurance of not less than One Million Dollars (\$1,000,000) combined single limit naming the City as an additional insured with an insurer registered with the Missouri Department of Insurance, and having a financial strength rating of "A-" or better and a financial class size IV or greater as indicated in

A.M. Best's Key Rating Guide (<http://www.ambest.com/home/default.aspx>) Owner shall provide City with a certificate of insurance prior to starting any work within the Right-of-Way.

11. To the fullest extent provided by law, Owner, for itself, its assigns and successors in interest, hereby holds harmless and indemnifies and agrees to defend the City from and against all Claims resulting from work within the Right-of-Way performed by Owner or its contractors pursuant to this Agreement, except to the extent caused by the gross negligence or willful misconduct of the City officers, officials, employees, volunteers, agents, consultants, attorneys or representatives.
12. The covenants and agreements contained in this Agreement are for the benefit of the City and the Right-of-Way owned by the City and shall run with the Property and be binding upon and inure to the benefit of the successors to the Property so long as the earth retaining system remains in place and in the Right-of-Way.
13. Modifications, repairs, improvements or removal of the concrete retaining wall supporting City-owned street facility and other areas extending with the Right-of-Way will require prior approval of the Board of Public Service.
14. In the event Owner transfers title of the Property to a successor, Owner shall be relieved of further liability for such obligations from and after the transfer of title of the Property to such successor so long as this Agreement remains "of record" as of the date of such transfer and such successor assumes in writing Owner's obligations under this Agreement.
15. Upon conveyance or transfer of the Property, Owner shall advise the purchaser or the transferee of the existence of this Agreement and the obligations hereby; provided, however, that City acknowledges and agrees that Owner shall not be in default of this Article so long as this Agreement remains "of record" at the time of such transfer.
16. The Agreement shall be considered effective as of the date it is recorded in the City of St Louis Recorder of Deeds. The Owner shall provide proof of recording prior to the issuance of any Encroachment Permit. Any changes to this Agreement require the written agreement of the Parties. Any amendment shall be in writing and recorded in the City of St Louis Recorder of Deeds
17. Notwithstanding anything to the contrary contained in this Agreement or elsewhere, in no event shall the City or Owner, or any of their respective officials, directors, members, partners, managers, officers, shareholders, employees, advisers or agents be liable for any consequential, incidental, indirect, special, exemplary or similar damages under this Agreement.
18. The following attachments are hereby made a part of this Agreement:
 - EXHIBIT 1 – Property Boundary Survey – Record Plat
 - EXHIBIT 2 - Structural engineering design drawings and calculations for ERS

