

RESOLUTION NO.: R-2014-092

*Authorizing the City Manager to execute an Encroachment Agreement between the City of Columbia and the South Carolina Budget and Control Board for installation and maintenance of a building overhang, doors and entrance ways, private sanitary sewer lines, private water/fire service lines and private storm drainage lines over the utility right of way area in the 500 block of Williams Street adjacent to the South Carolina State Museum Planetarium Observatory and Theater located at 514 Williams Street, Richland County TMS #08912-02-02 and 08912-02-03*

ORIGINAL  
STAMPED IN RED

BE IT RESOLVED by the Mayor and City Council of the City of Columbia, South Carolina, this 16th day of September, 2014, that the City Manager is hereby authorized to execute the attached Encroachment Agreement, or on a form approved by the City Attorney, between the City of Columbia and the State of South Carolina Budget and Control Board for installation and maintenance of a building overhang, doors and entrance ways, private sanitary sewer lines, private water/fire service lines and private storm drainage lines, as described in the attached Encroachment Agreement and further delineated on the attached easement drawing for Utility Easement and Water Easement for the SC State Museum Planetarium, Observatory and Theater, prepared for City of Columbia, dated September 20, 2012, and also being on file in the office of the Department of Utilities and Engineering, City of Columbia, South Carolina under file reference #252-09F, over the utility right of way area in the 500 block of Williams Street adjacent to the South Carolina State Museum Planetarium Observatory and Theater located at 514 Williams Street, Richland County TMS #08912-02-02 and 08912-02-03.

Requested by:

Assistant City Manager Gentry

  
MAYOR

Approved by:

  
City Manager

Approved as to form:

  
City Attorney

Introduced: 9/16/2014

Final Reading: 9/16/2014

ATTEST:

  
City Clerk

STATE OF SOUTH CAROLINA ) **ENCROACHMENT AGREEMENT**  
COUNTY OF RICHLAND ) **ALONG RICHLAND COUNTY TMS#08912-02-03 & 02**  
**FOR THE SC STATE MUSEUM PLANETARIUM,**  
**OBSERVATORY AND THEATER; CF#252-09**

The **CITY OF COLUMBIA**, hereinafter referred to as "the City" hereby consents for the **STATE OF SOUTH CAROLINA**, hereinafter referred to as "the State", to encroach over and under the City's existing 50' utility easement with a seven (7') foot building overhang, doors and entrance ways, private sanitary sewer lines, private water/fire service lines, and private storm drainage lines ("Encroachments").

RECITALS:

WHEREAS, the State of South Carolina is the owner of a parcel of land formerly known as Williams Street, identified as Richland County Tax Map Number 08912-02-03 and a parcel of land located at 514 Williams Street, Columbia, South Carolina and further identified as Richland County Tax Map Number 08912-02-02 (hereinafter collectively referred to as the "Subject Property"); and,

WHEREAS, (I) the City of Columbia has an existing water and sanitary sewer easement along Richland County TMS#08912-02-03 as reserved in the deed conveying the 1200 and 1300 blocks of Williams Street from the City of Columbia to the State of South Carolina, dated February 5, 1986 and recorded on January 28, 1992 in the office of the Register of Deeds for Richland County in Deed Book D1069, Page 461. (II) The City of Columbia has an existing fifty (50) feet in width utility easement along Richland County TMS#08912-02-03, granted by the State of South Carolina, dated February 12, 2013, and recorded on February 21, 2013 in the office of the Register of Deeds for Richland County in Record Book R1837 at Page 1235. (III) The City of Columbia has existing water lines and water line easements along Richland County TMS#08912-14-01; TMS#08912-02-01, 02 & 03 and as more particularly described in the Deed to Water Lines for the South Carolina State Museum (Formerly Columbia Mills Building), dated March 6, 2013 and recorded October 7, 2013 in the office of the Register of Deeds for Richland County in Record Book 1900 at Page 3078 , also as shown on record drawings for the Columbia Mills Building, in Richland County and the City of Columbia, South Carolina, dated April 12, 1989, last revised September 26, 1989, prepared for the State of South Carolina, prepared by Stevens and Wilkinson, Inc., Jerry L. Suddeth, S.C.P.E. #3317, and being on file in the Office of the Department of Utilities and Engineering, City of Columbia, South Carolina under City File #141-06. (IV) The City of Columbia has existing sanitary sewer lines and sanitary sewer line easements along Richland County TMS#08912-14-01; TMS#08912-02-01, 02 & 03 and as more particularly described in the Deed to Sanitary Sewer Lines for the South Carolina State Museum (Formerly Columbia Mills Building), dated March 6, 2013 and recorded October 7, 2013 in the office of the Register of Deeds for Richland County in Record Book 1900 at Page 3082 , also as shown on record drawings for the Columbia Mills Building, in Richland County and the City of Columbia, South Carolina, dated April 12, 1989, last revised September 26, 1989, prepared for the State of South Carolina, prepared by Stevens and Wilkinson, Inc., Jerry L. Suddeth, S.C.P.E. #3317, and being on file in the Office of the Department of Utilities and Engineering, City of Columbia, South Carolina under City File #141-06. The easements described in this paragraph are collectively referred to herein as "the easement" and/or "easement areas"; and,

WHEREAS, reference is made to an easement drawing for Utility Easement and Water Easement for the SC State Museum Planetarium, Observatory and Theater, prepared for City of Columbia, dated September 20, 2012, and being incorporated herein by reference as Exhibit "A". Said drawing also being on file in the office of the Department of Utilities and Engineering, City of Columbia, South Carolina under file reference #252-09F.

NOW, THEREFORE, in consideration of Five and No/100 Dollars (\$5.00), the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the State of South Carolina and City agree as follows:

- 1. Recitals. The aforesaid Recitals are incorporated in the Agreement and made a part hereof.

Book 1981-2343  
2014077675 10/22/2014 13:53:16.097  
Encroachment  
Fee: \$0.00 County Tax: \$0.00 State Tax: \$0.00  
2014077675 John T. Hopkins II  
Richland County R.O.D.

2. Right to Place Encroachments Within Easement Areas. The State shall have the right to construct, locate, maintain, repair and replace within the City's easement areas located on the Subject Property, a seven (7') foot building overhang, doors and entrance ways, private sanitary sewer lines, private water/fire service lines, and private storm drainage lines (the "Encroachments"). The Encroachments being more fully shown on the attached Exhibit "A".

If it becomes necessary, in the City's sole discretion, for the City to remove all, or a portion of, the Encroachments from the easement areas for the purposes of the maintenance or repair of any portion of the City's existing utilities, including, but not limited to, water mains, water service lines, sanitary sewer mains, sanitary sewer service lines, storm drainage lines, appurtenances or associated facilities, then the City shall have the right to do so, and shall not be liable to the State for replacement of the Encroachments removed or any costs or damages to the Encroachments resulting from such replacement or removal. Provided, however, that after the City's determination to remove all, or a portion of, the Encroachments from the easement areas, the City shall provide reasonable notice and an opportunity for the State to undertake alternative methods of maintenance or repair of the City's existing utilities, up to and including relocating the City's existing utilities, that would not require the removal of the Encroachments, upon review and approval by the City Engineer, where such review and approval will not be unreasonably withheld or delayed. The cost and expense of any alternative method of maintenance, repair, or relocation of the City's utilities undertaken by the State which exceeds the cost and expense which City would have incurred to maintain or repair the City's existing utilities shall be at the sole expense of the State. Should the State fail to undertake any alternative method of maintenance or repair of the City's existing utilities within sixty (60) days after notice from the City, the City may proceed to remove the Encroachments and the City shall not be liable to the State for replacement of the Encroachments removed or any costs or damages to the Encroachments resulting from such replacement or removal. In the event the Encroachments are removed by the City, the State shall have the right to replace and/or reinstall the Encroachments, and the replaced Encroachments shall be subject to this Encroachment Agreement.

In the case of an emergency, in the City's sole discretion, which, without immediate action, would imperil life and/or property, or subject the City to regulatory penalties, the City may remove all, or a portion of, the Encroachments from the easement areas for the purposes of emergency maintenance or repair of any portion of the City's existing utilities, including, but not limited to, water mains, water service lines, sanitary sewer mains, sanitary sewer service lines, storm drainage lines, appurtenances or associated facilities, and the City shall not be liable to the State for replacement of the Encroachments removed or any costs or damages to the Encroachments resulting from such replacement or removal.

3. Easement Rights. The State agrees that the use of the City's easement areas as herein provided shall in no way affect the validity of the City's easement and shall in no way modify or restrict the use or rights of the City, its successors and/or assigns, in and to the portion of the easement areas to be used.

4. Damage to City of Columbia Utilities. The State agrees that should the construction, maintenance, operation or existence of the Encroachments as described in this Agreement cause the City, now or in the future, to have to relocate or replace any portion of the City's existing water mains, water service lines, sanitary sewer mains, sanitary sewer service lines, storm drainage lines, appurtenances or associated facilities, then such relocation or replacement shall be at the sole expense of the State. If such relocation or replacement will be for the benefit of the State, not required by the City's needs, and in response to a request by the State, the City may make such relocation or replacement but only at the State's sole expense. The City will be under no obligation to make any such requested relocation or replacement.

5. Waiver. The failure of any party to exercise any right given hereunder or to insist upon strict compliance with any term, condition or covenant specified herein shall not constitute a waiver or such party's right to exercise such right or to demand strict compliance with any such term, condition or covenant under this Agreement.

6. Construction of Building. Prior to commencement of any activity within the easement areas by the State, its agents, servants, lessees, employees and/or independent contractors of the State, a copy of this document will be provided to said party performing any activity in the easement areas with requirements of strict compliance with the terms, obligations, and conditions as set forth herein.

Any soil deposited on the City's easement, including the areas of the Encroachments, will be leveled or removed and the same will be restored to its original or a better condition than existed prior to construction, installation, alteration or maintenance by the State, including but not limited to restoration of the existing grade. No soil shall be permanently removed from the easement areas without prior approval of the City, except for the installation or alteration of the facilities. No permanent stockpiling of materials (including soil) will be permitted in the City's easement areas, including the areas of the Encroachments.

The State agrees that any construction or maintenance in the easement areas as provided for herein will be performed in a good and workmanlike manner and in such a manner so as not to endanger the City's facilities or interfere with the City's operation or maintenance requirements.

7. Construction Notice. The State must provide the City a seventy-two (72) hour notice prior to work in the easement areas and the City's representatives may be present during such work, if the City deems necessary. The State shall contact Palmetto Utility Protection Services (PUPS) for location of existing utilities prior to performing work in the easement areas. However, in the case of an emergency, the State may proceed with work in the City's easement areas upon notifying the City's Water Distribution Division at its 24-hour phone number: (803) 545-3900, the City's Wastewater Maintenance Division at its 24-hour phone number: (803) 545-3910, and the City's Street Division at its 24-hour phone number: (803) 545-3790.

8. Successors and Assigns. This Agreement shall run with the title to the Subject Property and shall be binding upon and inure to the benefit of and be enforceable against the parties hereto and their respective heirs, legal representatives, successors and permitted assigns, and successors in title.

9. Applicable Law. This Agreement and all amendments hereto shall be governed by and construed under the laws of the State of South Carolina Any action concerning this Agreement shall be brought only in the applicable circuit court of South Carolina.

10. Severability and Construction. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable; such provision, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall be deemed severable, and the remainder hereof shall not be affected thereby, and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law. This Agreement shall not be construed more strictly against either party, whether due to any rule of law providing therefore, or otherwise, and it is agreed that this Agreement is the result of mutual negotiation regardless of which party has physically prepared the document.

(SIGNATURE PAGES TO FOLLOW)

The foregoing instrument was executed this 13<sup>th</sup> day of October, 2014

WITNESSES:

Nicole Printon  
(1st Witness)

Janet S. Sallee  
(2nd Witness)

STATE OF SOUTH CAROLINA  
By: the Budget and Control Board

By: Nikki Haley  
(Signature)

Name: Governor Nikki Haley  
(Print Name)

Title: Chair, Budget and Control Board  
(Print Title)

State of South Carolina )  
County of Richland )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 13 day of October,  
2014, by Katherine S. Haltiwanger of Columbia, South Carolina  
(Name and Title of Officer)

on behalf of the State of South Carolina.

Katherine S. Haltiwanger  
Notary Public for South Carolina  
My Commission Expires: April 7, 2018

The foregoing instrument was executed this 23rd day of September, 2014

WITNESSES:

CITY OF COLUMBIA

Ashley R. Gach  
(1st Witness)

By: Teresa B. Wilson  
(Signature)

Nicholas Kance  
(2nd Witness)

Name: Teresa B. Wilson

Title: City Manager

State of South Carolina )  
County of Richland )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 23rd day of September, 2014, by Teresa B. Wilson, City Manager on behalf of the City of Columbia.

Erika D. Moore  
Notary Public for South Carolina  
My Commission Expires: 4.16.2020



# EXHIBIT A

CITY OF COLUMBIA, S. C.  
 OFFICE OF CITY ATTORNEY  
 P. O. BOX 667  
 COLUMBIA, SC 29202

