

**CITY OF SARATOGA SPRINGS
RIGHT-OF-WAY ENCROACHMENT PERMIT AGREEMENT**

This Agreement, made and entered into this _____ day of _____ of 20____, by and between the City of Saratoga Springs, a municipal corporation and political subdivision of the State of Utah, organized and existing under the laws of the State of Utah, with its principal offices located at 1307 North Commerce Drive, Suite 200, Saratoga Springs, Utah 84045 ("City"), and _____ with its principal offices located at _____ ("Owner").

WITNESSETH:

WHEREAS, the Owner is desirous of obtaining from the City a permit to construct and install public utilities and thereafter maintain such public utilities and related appurtenances ("facilities" or "facility") within the right-of-way limits of specified City roads, streets, and rights-of-way ("public ways") within the City and immediately adjacent thereto for the purpose of _____, and,

WHEREAS, the City is willing to grant said permit under the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Location of Improvements

a. Address(es):

Address(es)/Location: As shown on the attached set of drawings

b. The location of the facilities within the roads, streets, trails, and other property within the City on one or both sides shall be as in accordance with the plans, specifications, and maps attached as Exhibit A, incorporated herein by reference, and on file in the offices of the parties hereto.

c. The foregoing description of facility location is subject to such changes or variations therefrom as may be required or approved by the City Public Works and/or Capital Facilities Department ("Department") at the time of construction. Following completion of construction the Owner shall provide to the City, electronic copies of the "as-built" drawings that show the actual improvements depth and center lines and location of all appurtenances on all roads, streets, trails, and other property where said improvements are installed.

2. Permit Fees. The Owner shall pay the City a _____ administration permit fee before a permit will be processed; this fee is nonrefundable.

3. Approval of Construction. Owner shall provide City with at least 5 business days advanced notice prior to commencing any excavations for the improvements and any appurtenant facilities. Construction shall be carried forward to completion in the manner required by City.

4. Compliance with City Standard Technical Specifications and Drawings. Owner shall perform all work in accordance with the City of Saratoga Springs Standard Technical Specifications and Drawings ("City Standards"). Failure to comply with City Standards may result in a citation and/or revocation of this permit.

5. Protection of Traffic During Construction; Traffic Control Plan. During construction and any subsequent repair or replacement activities, Owner shall take appropriate steps to minimize interference with or interruption of vehicular traffic. The Owner shall conform to all traffic control standards of the City, and shall at all times maintain such watchmen, barricades, lights, or other measures for the protection of traffic as may be required by the City to warn and safeguard the public against injury or damage during Grantee's construction operations. The Owner shall also submit a formal traffic control plan for approval by the City as a condition for the issuance of the permit. The traffic control plan must meet MUTCD and City standards.

6. Compaction of Backfill. The backfilling of any trench within the paved portion of the roadway, the shoulders thereof, or the portion under an intersecting street or roadway shall be thoroughly compacted to generally accepted industry standards and City standards. The method of compaction shall be subject to inspection and approval by the City. The Owner shall be liable for any damage to persons, property, or the pavement, due to its negligence in the compaction of backfill material.
7. Restoration of Existing Pavement. The Owner shall replace, at its expense, any pavement removed or damaged with the same type and depth of pavement as that which is adjoining, including the gravel base material. Owner shall also comply with all City standards. This pavement restoration shall be subject to the inspection and approval of the City. If weather conditions—as determined by the City—do not permit immediate placing of permanent pavement, a temporary pavement shall be placed until such time as weather conditions are favorable—to be determined by the City—at which time the temporary pavement shall be removed and replaced with a permanent pavement. If the gravel surface, gravel shoulders, or gravel surfaced approach roads become fouled with clay or other unsuitable materials, the entire surfacing shall be removed and replaced with a new gravel surfacing material. The repairs to pavement or surface shall include pavements that have been damaged with construction equipment during construction of the improvements.
8. Disposal of Surplus Material in Cleaning Up Roadway. Upon completion of the work, all surplus material shall be removed from within the limits of the roadway. The disturbed surface shall be carefully graded to the lines and grades established. Any roadway facilities such as signs, culverts, etc., disturbed or damaged during the progress of the work shall be properly restored to their preconstruction condition.
9. Bond. To guarantee the full performance of the conditions and requirements in this Agreement, Owner shall post a cash or letter of credit bond with the City in the amount of \$_____. (A cash bond is required if the amount is less than \$25,000.) The amount of the required bond may be increased at the discretion of the Public Works Director whenever it appears that the work to be performed may exceed that covered by the standard amounts in the permit application. Under no circumstance will the posted bond be reduced or refunded prior to the end of the one-year period following completion and acceptance in writing by City. The bond also guarantees that the excavated street or public right-of-way is restored or repaired by the Owner in accordance with City standards, or, if the repair work is done by the City, to guarantee reimbursement to the City for that work. The bond shall guarantee the full performance of the requirements of this Agreement as well as guarantee that the construction work and materials shall remain free from defects for a period of 1 year following completion and acceptance in writing by City that such construction work and materials meet City standards.
10. Default. Owner shall automatically be considered in default and be held jointly and severally liable if, after receiving notice from City 10 calendar days' in advance of a deficiency, the Owner has not remedied the default to City's satisfaction. In such an event, City may exercise any remedy at law or equity to cure such default, including but not limited to, using any or all of the Bond amount in Paragraph 9 to complete or repair the work, revoking the encroachment permit issued pursuant to this Agreement, revoking any other permit issued by the City such as building permits, development permits, grading permits, etc., seeking injunctive relief, pursuing litigation in federal or state court, or pursuing any other legal claim or action. Owner shall be responsible for City's administrative costs, attorney's fees, court costs, and all expenses associated with the exercise of City's rights pursuant to this paragraph.
11. Insurance. Prior to entering onto the Public Ways and construction of the Facilities, or exercising any rights under this Agreement, Owner agrees to obtain and maintain a policy of commercial general liability insurance insuring against any and all claims for damage, personal injury, bodily injury, death, property damage occurring on, in, or about the Public Ways and the Facilities. This insurance shall have minimum coverages of at least Two Million and No/100 Dollars (\$2,000,000.00), per occurrence, Two Million and No/100 Dollars (\$2,000,000.00), aggregate. Owner shall provide Grantor a Certificate of Insurance, Endorsements, and Policies evidencing same. Also, Owner agrees to maintain and keep in force, during the term hereof, all applicable Workers' Compensation and Employers' Liability Insurance required under applicable Workers' Compensation Acts and/or applicable law.
12. Maintenance of Facilities by Owner. The facilities shall at all times be maintained, repaired, reviewed, and operated by and at the expense of the Owner in accordance with its standard operating procedures and accepted industry standards. The City reserves the right, without relieving the Owner of its obligation hereunder, to reconstruct or to make such repairs to said facilities as it may consider necessary in the event the Owner fails so to do after reasonable written

notification by the City. Owner hereby agrees to reimburse the City for its actual and reasonable costs of such reconstruction or repairs within 30 days of receipt of itemized bill. This remedy shall not affect City's remedies in paragraph 12 in any way.

13. Crossing of Facilities in Expansion of Roadway or Buried Infrastructure Systems; Emergency Excavation. It is expressly understood and agreed by the parties hereto and as part of the consideration for this agreement that the City shall have the right to cross said facilities at any point necessary in the future construction and expansion of the City's roadway or buried infrastructure systems. In such a case, City shall use due care and diligence in the protection of said facilities; however, City shall not be responsible for any damage to said facilities and Owner shall have no recourse or cause of action if said facilities are damaged by City in responding to an emergency, defined as an occurrence necessitating immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.
14. Non-Exclusive Permit. The rights under this Agreement shall be nonexclusive and the City reserves, among all other rights, the right to use the public ways for itself or any other entity that the City grants the right to within the City. City will exercise reasonable care, where possible and where the City has advance notice upon which it can reasonably act, to prevent other uses of the public ways from unreasonably interfering with Grantee's rights as granted herein. Also, Owner understands and agrees that the City may require Owner to exercise its rights under this Agreement in a manner that will not conflict with other uses of the public ways.
15. City Regulatory Authority. In addition to the provisions herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety, and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Utah, the laws of Utah, or City Ordinance. Any additional ordinance or regulation shall supersede any provisions of this Agreement that are in conflict with such ordinance or regulation.
16. Public Utility Easements. Prior to the installation of any of Grantee's facilities in public utility easements, Owner shall provide advance notification to any property owners on whose property the easement is located. Such advance notification shall be at least two days prior to installation of such facilities. Notification shall be made by personal contact or telephone AND by written notice. Such notification shall set forth the date during which Owner will be installing facilities in the public utility easement and shall provide a telephone number where property owners may call Owner pertaining to any questions or complaints concerning use of the public utility easement by Owner. Upon commencement of installation of facilities in a public utility easement, Owner shall proceed diligently to complete that installation. Conduits/facilities shall be buried at a minimum depth of 36 inches and "bury tape" identifying the utility shall be installed within one foot of finished grade. No trenches or otherwise uncovered areas shall be left open longer than necessary to complete the installation. All disturbed landscaping shall be replaced or repaired to the landowner's satisfaction within five business days of receipt of notice from landowner. Damage to City pipelines resulting from installation or maintenance of the facilities shall be reported immediately to the City Engineer and repaired immediately by qualified personnel. All work performed in City rights-of-way, road, trails, parks, property and improvements shall be done in compliance to the City's most recent standards and specifications.
17. Public Right-of-Way. Prior to the installation of any of Grantee's facilities in the Public Right-of-Way (ROW), Owner shall provide advance notification to the City. Such advance notification shall be at least five days prior to installation of such facilities. Notification shall be made by personal contact or telephone AND by written notice. Such notification shall set forth the date during which Owner will be installing facilities in the public ROW and shall provide a telephone number where the City may call Owner pertaining to any questions or complaints concerning work within the ROW by Owner. Upon commencement of installation of facilities in a public ROW, Owner shall proceed diligently to complete that installation. Conduits/facilities shall be buried at a minimum depth of 36 inches and "bury tape" identifying the utility shall be installed within one foot of finished grade. No trenches or otherwise uncovered areas shall be left open longer than necessary to complete the installation. All disturbed areas shall be replaced or repaired to the City's satisfaction within five business days of receipt of notice from the City. Damage to City pipelines, utilities, or other infrastructure resulting from installation or maintenance of the facilities shall be reported immediately to the City and repaired immediately by qualified personnel. All work performed in City rights-of-way, road, trails, parks, property and improvements shall be done in compliance to the City's most recent standards and specifications.
18. Locating Existing Utilities. Owner shall be solely responsible for locating all existing utilities prior to commencing work. Owner shall contact Blue Stakes to have underground facilities located within the area of all excavations or directional bores. Contractors utilizing directional boring are required to physically locate ALL existing facilities in the precise location

of the intended crossing, prior to the directional bore being made. Applicant will be responsible for and will repair or pay for any damages to underground facilities that were not physically located in the precise location of crossing, prior to the directional bore or excavation.

19. Changes Required by Public Improvements. Owner shall at its expense temporarily disconnect, relocate or remove from the street or other public place any property of Owner when required by the City by reason of traffic conditions, public safety, street vacation, street construction, and installation of sewers, drains, water pipes, or any other type of structure or improvement by public agencies. If the City elects to change the grade of any street or public way, or to vacate or otherwise alter the same, Owner shall relocate improvements at its expense.
20. Facilities Not to Be Hazardous or Interfere. All improvements of Owner shall be located, constructed, and installed in an orderly and workmanlike manner and maintained so as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, and travel upon the streets. Owner shall keep and maintain all of its property in good condition, order, and repair.
21. No Authority to Trim Trees. Owner shall not have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and other public places of the City.
22. Liability. Neither this Agreement nor any supervision or control exercised by the City, or on its behalf, shall relieve the Owner of any duty or responsibility to the general public nor relieve said Owner from any liability for loss, damage, or injury to persons or property, including the roadway, sustained by reason of the negligent installation, operation, maintenance, repair, or removal of the improvements.
23. Indemnification and Release. To the maximum extent allowed by applicable law, Owner shall indemnify, release, and hold harmless the City and its employees, officials, and officers harmless against all actions, causes of damages, losses, claims, attorney fees, and costs arising out of any act or omission of Owner and its subcontractors, assigns, and successors related in any way to Grantee's, or Grantee's subcontractors, assigns, and successors, performance under this agreement. This indemnification and release provision shall apply to all theories of recovery, including breach of contract or warranty, negligence, and strict or statutory liability, except for negligence of the City. In the event any claims are caused by the joint or concurrent negligence of the City and Owner shall indemnify the City in proportion to Grantee's (or its subcontractors, assigns, and successors) own negligence or liability.
24. Agreement Not to Be Assigned. The Owner shall not assign this agreement or any interest therein without the written consent of the City.
25. Amendments. No amendment to this Agreement shall be effective until mutually agreed to in writing by the City and Grantee.
26. Successors and Assigns. All covenants and agreements herein contained shall be binding upon the parties hereto and their successors and assigns.
27. Notices. Any notice given under this Agreement shall be in writing and shall be delivered personally, mailed by first class or express mail, or sent by e-mail at or to the following addresses:

NAME Owner: _____
c/o NAME OF AGENT (or current registered agent): _____
ADDRESS: _____
CITY, STATE: _____
EMAIL OF AGENT: _____

NAME OF CONTRACTOR: _____
c/o NAME OF AGENT (or current registered agent): _____
ADDRESS: _____
CITY, STATE: _____
EMAIL OF AGENT: _____

City of Saratoga Springs
c/o Jeremy Lapin (or current Public Works Director)
1307 N. Commerce Drive, Suite 200
Saratoga Springs, UT 84045
jlapin@saratogaspringscity.com

Notice shall be deemed given when actually received if personally delivered, the earlier of the day actually received or the third business day after the notice is deposited in the United States mail properly addressed and postage prepaid if sent by mail, or the date a delivery receipt is received if sent by e-mail

- 28. Subject To. This permit is subject to the right of the City at all times as the City deems necessary to construct roads, public buildings, sidewalks, parks or to carry out any other City purpose over the area covered by this permit. In the event that City determines that the public interest and necessity require the construction of any street or sidewalk or reconstruction, realignment, or alteration of grade or width of any street or roadway under City jurisdiction, so as to necessitate in the reasonable expertise of the City the relocation of the Grantee's facilities located within such street, roadway, trails, and other property within the City, the facility relocation costs shall be borne by the Owner.

- 29. Severability. If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of the Permit or any renewal or renewals thereof.

- 30. Termination. Either party may terminate this Agreement with or without cause by providing the other party 30 days advance written notice. However, this Agreement shall survive termination with respect to any and all obligations contained in this Agreement for any repairs or construction work performed in public ways prior to termination of this Agreement. If the Owner or its successors in interest cease using the facilities which are the subject of this Permit for the provision of public utility service, this Permit shall be terminated. In such an event, Owner shall have 30 days to remove its facilities, after which ownership of such shall automatically transfer to the ownership of City.

Pursuant to UCA 78B-18a, I certify and declare under criminal penalty in Utah that the above information is true and correct, that I agree to be bound by the terms of this agreement, and that I have the authority to legally bind the partnership/LLC/corporation listed below.

Signed on the _____ day of _____, 202____, at _____ (city and state)

Signature: _____

Printed Name: _____

Title: _____

Name of Partnership/LLC/Corporation: _____

"City":
City of Saratoga Springs
By: _____
Its: _____