

SECURITY AGREEMENT FOR OBSTRUCTION OF PUBLIC RIGHTS-OF-WAY

THIS AGREEMENT ("Agreement") is entered into on the _____ day of _____, 20____, by and between the City of Gainesville, Florida, a municipal corporation ("City"), _____, a Florida _____ ("Permittee"), and _____, a Florida _____ ("Issuer").

WITNESSETH

WHEREAS, the Permittee has applied to the City for a permit under the City's Code of Ordinances, Chapter 23, Article V – *Public Rights-of-Way Obstructions*; and

WHEREAS, pursuant to Section 23-107, if any excavation is made within a public right-of-way, or if there is any risk of damage or detriment to the premises of a public right-of-way, then the Permittee shall provide security to the city to ensure that the right-of-way is restored to the same or better condition than existed when the permit was issued and to ensure payment for any damage to public property or trash and debris removal as a result of such permit issuance; and

WHEREAS, the security provided by the Permittee shall be enforceable by and payable to the City in an amount reasonably corresponding to the nature and extent of the work to be performed within the right-of-way as determined by the Public Works Director or designee. Right-of-way work by Permittee otherwise covered by a separate security agreement between the Permittee and the City shall not be included when determining the necessary security subject to this Agreement.

NOW THEREFORE, in consideration of the mutual covenants as set forth below, the parties agree as follows:

1. **Effective Date and Term.** This Agreement shall become effective on the date the last of the parties executes this Agreement as indicated below ("Effective Date") and shall remain in effect until the Security has been released in accordance with Section 3 of this Agreement.
2. **Security.** Permittee shall provide, on the same date as the Effective Date of this Agreement, the following form(s) of security in compliance with Section 23-107 ("Security"). The Security provided by the Permittee shall be enforceable by and payable to the City in a sum established by the Public Works Director or designee that reasonably corresponds to the nature and extent of the work to be performed within the right-of-way. Any surety bond or letter of credit provided in accordance with this section shall be attached to this Agreement as **Exhibit A** and shall be incorporated herein as if set forth in full. In the event of any conflict or inconsistency between this Agreement and the Security forms attached as **Exhibit A**, the terms of this Agreement shall prevail. *Complete the applicable* _____.

— **Surety Bond:** Permittee shall cause Issuer to issue to the City, as beneficiary, a Surety Bond in the amount of \$ _____, lawful money of the United States of America. The Issuer shall be a surety company authorized to do business in the state of Florida with a rating of not lower or less than A-VII as rated by A.M. Best Company, Inc. The Surety Bond shall provide the following: “This bond may not be cancelled, or allowed to lapse, until 60 calendar days after receipt by the City of Gainesville, by certified mail, return receipt requested, of a written notice from the Issuer of the bond of intent to cancel or not to renew.”

— **Letter of Credit:** Permittee shall cause Issuer to issue to the City, as beneficiary, an Irrevocable and Unconditional Letter of Credit in the amount of \$ _____, lawful money of the United States of America. The Issuer shall be a Florida bank. The Security issued shall, by its terms, be irrevocable, unconditional, and provide for drafts to be honored at a banking location within Alachua County, Florida.

3. **Terms of Security.** The Permittee shall maintain compliance with all the requirements, duties, and obligations imposed by the City’s Code of Ordinances, Chapter 23, Article V – *Public Rights-of-Way Obstructions*. Security shall be maintained at all times during the obstruction of the public rights-of-way. The Security shall be released or returned to Permittee no later than 15 calendar days after notice to the City of right-of-way obstruction completion, unless the City determines there is damage to City property or other costs incurred by the City.

In the event the Permittee, in the sole discretion of the City or a court of law, fails to perform any requirement, duty, or obligation imposed by Chapter 23, Article V of the Code of Ordinances, the Permittee shall be deemed in default. The City may then recover from the Security, jointly and severally, any damages or loss suffered by the City as a result of such default, including but not limited to relining the right-of-way to the same or better condition that existed when the permit was issued.

4. **Permittee’s Responsibilities.** The Permittee warrants that it will maintain compliance with all the requirements, duties, and obligations imposed by the City’s Code of Ordinances, Chapter 23, Article V – *Public Rights-of-Way Obstructions*, and warrants any work completed against all defects in materials and construction workmanship and also against design defects.

5. **City’s Responsibilities.** The City agrees to fulfill its responsibilities as required by the City’s Code of Ordinances, as may be amended from time to time.

6. **Issuer’s Responsibilities.** This section is applicable only if the Permittee provided Security to the City in the form of a surety bond or a letter of credit. The Issuer agrees that the Security shall remain valid for the term of this Agreement and shall be maintained and administered in accordance with this Agreement, including the provisions specified in Section 2 of this Agreement, and that any disbursement or release of the Security during the term of this Agreement shall not be made without the express written approval and certification of the City. In the event the Security can only be issued for a limited term, the Security shall provide for automatic extensions, without requiring written amendment, for successive periods as necessary to include the full term of this Agreement. In addition, the Issuer shall provide written notice to the City at least 60 calendar days in advance of any expiration date, in the event the term of the Security will not be extended beyond the then current expiration date.

7. **Inspection.** During the term of this Agreement, the City may inspect any work as it finds necessary to ensure compliance with Chapter 23, Article V or any applicable law or regulation.

8. **Relationship.** This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture between the City and the Permittee, or the Issuer. The Permittee or the Issuer cannot create any obligation or responsibility on behalf of the City or bind the City in any manner. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein.
9. **Bankruptcy.** The filing by the Permittee or the Issuer of a petition for relief under federal bankruptcy laws or any other similar law or statute of the United States, or the entry of an order or decree appointing a receiver of the Permittee or the Issuer or their respective assets, shall not affect the Security or the City's rights under this Agreement.
10. **Modification and Waiver.** This Agreement may only be modified or waived in writing signed by all the parties. No course of dealing shall be deemed a waiver of rights or a modification of this Agreement. The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right. No waiver of a provision of this Agreement shall apply to any other portion of this Agreement. A waiver on one occasion shall not be deemed to be a waiver on other occasions.
11. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. Any legal action, in equity or law, with respect to this Agreement shall be brought and heard in Alachua County, Florida.
12. **Sovereign Immunity.** Nothing in this Agreement shall be interpreted as a waiver of the City's sovereign immunity as granted under Section 768.28, Florida Statutes.
13. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or unenforceable shall be severable and shall not be construed to render the remainder to be invalid, illegal, or unenforceable.
14. **Captions.** The captions and headings of sections or paragraphs used in this Agreement are for convenient reference only and shall not limit, define, or otherwise affect the substance or construction of provisions of this Agreement.
15. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any representations or statements heretofore made with respect to such subject matter, whether verbal or written, are merged herein.
16. **Successors and Assigns.** No parties to this Agreement shall assign or transfer any interest in this Agreement without the prior written consent of the other parties. The parties each bind the others and their respective successors and assigns in all respects to all the terms, conditions, covenants, and provisions of this Agreement.

17. **Time.** Time is of the essence in this Agreement. Whenever a notice or performance is to be done on a Saturday or Sunday or on a legal holiday observed by the City, it shall be postponed to the next business day.

18. **Notices.** Any notices pursuant to this Agreement shall be effective upon receipt and sent by either certified mail, return receipt requested, overnight courier service, or delivered in person to the following addresses:

To the City: Director of Public Works
 City of Gainesville
 P.O. Box 490, Station 58
 Gainesville, Florida 32627-0490

To the Permittee: _____

 Phone: _____
 Fax: _____

To the Issuer: _____

 Phone: _____
 Fax: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officials on the dates written below.

WITNESSES:

Sign: _____

Print Name: _____

Sign: _____

Print Name: _____

CITY OF GAINESVILLE:

By: _____

Print Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

I, an officer duly authorized in the state and county named above to take acknowledgments, certify on this date before me, the foregoing instrument was acknowledged by _____ the City of Gainesville. He personally appeared before me and is (check one of the below):

_____ personally known to me, or
_____ produced the following type of identification: _____

Executed and sealed by me on _____, 20____.

Notary Public
Print Name: _____
My Commission Expires: ____/____/____

WITNESSES:

Sign: _____

Print Name: _____

Sign: _____

Print Name: _____

PERMITTEE:

By: _____

Print Name: _____

Title: _____

STATE OF FLORIDA
COUNTY OF _____

I, an officer duly authorized in the state and county named above to take acknowledgments, certify that on this date before me, the foregoing instrument was acknowledged by _____, as _____ for and on behalf of _____. He/she personally appeared before me and is (check one of the below):

_____ personally known to me, or
_____ produced the following type of identification: _____

Executed and sealed by me on _____, 20____.

Notary Public
Print Name: _____
My Commission Expires: ____/____/____

WITNESSES:

Sign: _____

Print Name: _____

Sign: _____

Print Name: _____

ISSUER:

By: _____

Print Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

I, an officer duly authorized in the state and county named above to take acknowledgments, certify that on this date before me, the foregoing instrument was acknowledged by _____, as _____ for and on behalf of _____. He/she personally appeared before me and is (check one of the below):

_____ personally known to me, or
_____ produced the following type of identification: _____

Executed and sealed by me on _____, 20____.

Notary Public
Print Name: _____
My Commission Expires: ____/____/____