INSTRUCTIONS FOR EASEMENT OR RIGHT-OF-WAY (ROW) USE AGREEMENTS

PURPOSE OF EASEMENT USE AGREEMENT: It is illegal to have certain improvements in public easements without an Easement Use Agreement, or other approval by the City as provided in the Arlington City Code. The term "improvement" includes, but is not limited to, concrete or asphalt paving, swimming pools, fences, retaining walls, and temporary or permanent buildings. The term "easement" includes easements for streets, drainage and utilities. Note that the Agreement allows you to use the easement area only until the City or a utility provider needs the area; this might mean you need to repair, replace, or permanently remove your improvement if the easement area is needed for public or utility purposes.

SUMMARY OF PROCEDURE TO OBTAIN AN EASEMENT USE AGREEMENT: Make the permit application for the improvement you wish to make on your property before starting the easement use agreement process. If the comments from city staff during the permit review process indicate that an easement use agreement is necessary, you will pay the required fee at the time you submit the completed application and easement use agreement (signed by the owner) to the Community Development and Planning Department for processing. The agreement must contain the following: a completed, signed Agreement, a completed Exhibit No. 1 (a legal description of the owner's property as shown in the deed), an Exhibit No. 2 (a description of the proposed easement use area, including a legal description and a site plan or drawing showing the easement or ROW use area, and if required, a cross-section of the proposed improvement), an Exhibit No. 3 that the City will send to all utilities for review and signature (Consent of Utilities), and an Exhibit No. 4 (Owner's indemnification of utilities).

INSTRUCTIONS: PLEASE READ CAREFULLY

Review the application and agreement and be sure you understand the terms of the Agreement. The City cannot provide legal advice to you related to this agreement. Fill out the application and the agreement, and provide all exhibits. You or your surveyor may contact the Information Desk at 817-459-6502 and ask for the Engineer of the Day for more information about these forms.

APPLICATION: The application must be completely filled out. Please check the City's Map Room to determine the existing type of dedication for utilities in the proposed easement use area (e.g. drainage easement, public utility easement, right-of-way etc.)

AGREEMENT: In first paragraph of the agreement, please describe the proposed use of the easement (i.e. six-foot-high stone retaining wall, a five-foot-high double-sided wood fence etc.) The agreement must be completed, signed by the owner, and acknowledged by a notary public, and must include completed exhibits. If the owner is a corporation or other legal entity, the authorized signatory, such as a partner or corporate officer, must provide evidence of authority to bind the corporation such as by-laws or a corporate resolution. An authorized agent of the owner must submit a Power of Attorney if signing the agreement on behalf of the owner.

EXHIBIT NO. 1: Insert the legal description of the Owner's Property as shown on your deed, including volume and page where your deed is recorded in the Tarrant County Deed Records:

EXHIBIT NO. 2: Please limit the requested easement use area to only the area needed to accommodate the owner's proposed improvements. Provide all required information on 8 1/2"x11" paper identifying the sheets as "1 of 2", "2 of 2", etc. For the legal description of the proposed easement use area, a metes and bounds description must be prepared and stamped by an engineer or surveyor unless city staff has determined that the easement use area is easily described as part of a recorded easement, such as "the northernmost five feet of the public utility easement on Lot 5, Block 2 of the Anderson Addition, recorded in Volume 388, Page 379, Plat Records, Tarrant County." If the easement meanders, such as along a creek, a metes and bounds description of the easement use area is required.

A graphical representation of the easement use area must be provided to make it immediately obvious where the easement and the easement use area are on the owner's property. The drawing depicting the proposed easement use area must show the owner's lot, abutting lots, the block, and the addition. This drawing shall include a north arrow, legal description of the subject property and adjoining properties. The easement shall be designated on this drawing as utility, drainage, private access, etc. exactly as shown on the plat or other instrument that created the easement.

A cross-hatched area, labeled "Easement Use Area for fence" or similar language describing the improvement, showing where the easement use area is within the easement must be shown in one of the following formats: on a plat, on a site plan accepted as part of the permit application, or on a site plan sealed by a registered surveyor. You may reduce large plats, if the final document is

legible and the easement use area is easily determined on the reduced-size plat. City staff will make the decision about legibility and determinability of the easement use area, and sufficiency of descriptions.

No improvements, such as retaining walls, piers or fences, may be placed directly over an existing or proposed public utility facility including but not limited to water or sanitary sewer lines, or appurtenances, drainage pipes, electrical lines for street lights.

If requested by City staff, Owner must provide a detail and/or cross-section of the deck, sign, retaining wall, fence, drive, piers, footing depth, etc. For a retaining wall over four feet in height (measured from the footing to the top of wall) the design document must be sealed by a registered engineer.

EXHIBIT NO. 3: This Utilities Consent form must be signed by all utilities listed regardless of whether the utilities have utility equipment in the easement. The City will process this part of the paperwork for you.

EXHIBIT NO. 4: This exhibit must be attached to the agreement in the exact form provided in the application.

After the application and the agreement are filled out, you must return the forms to the Community Development and Planning Department with a $125 non-refundable application fee.

The agreement will be circulated throughout various departments within the City and to all Utility providers. Please allow 10 working days for review.

When the agreement has been circulated and approved by the necessary City departments, Owner must submit a check made payable to "County Clerk-Tarrant County" for the appropriate fees to file the agreement and all exhibits with the County. A City representative will contact the Owner with the amount required for the County recording fee.

City staff accepting the recording fee will notify the staff person responsible for issuing the building permit that the Agreement is complete. City staff will send the agreement to Tarrant County for filing. Tarrant County will record, the agreement and return it to Community Development and Planning; city staff will then send a copy of the filed agreement to the Owner for the Owner's records.

APPLICATION FOR USE OF A PORTION OF A PUBLIC EASEMENT

Date of Application Submittal: _____

1. Owner's Property is described as Lot ___ Block ___ of the _____ Addition of the City of Arlington, Tarrant County, Texas, at the following Street Address _____ (if the property has an address).
   Note: If the property does not have a lot and block designation, attach the property description as shown in the deed to this application.

2. The portion of the easement/right-of-way Owner wishes to use is as follows:
   _____
   _____

3. Owner's proposed use of the easement is as follows: _____
   _____

4. The public utility easement, drainage easement, or right-of-way has been granted for the following use (please state exactly as shown on the plat or easement granting instrument): _____
   _____

5. Name of Owner of the Property: _____
   Owner's Address for communication related to this application:
   _____
   _____
   City State Zip
   Telephone: _____
   Fax Number: _____
   Email address: _____

7. Name of Agent of Owner of the Property, if the Agent is processing the application on behalf of the Owner: _____
   Agent's Address: _____
   _____
   City State Zip
   Telephone: _____
   Fax Number: _____
   Email address: _____

THE STATE OF TEXAS §

Easement Use Agreement
("Agreement")

COUNTY OF TARRANT §

That the City of Arlington, a municipal corporation ("City") and all Utility Companies having a right to use public utility easements ("Non-City Utilities") do consent and agree to permit _____("Owner") the owner of the property described in Exhibit 1, (the Property) to use a portion (the "Easement Use Area") of an easement or right-of-way dedicated to City (the "Easement"), the Easement Use Area being more particularly described in Exhibit No. 2 attached to this Agreement and incorporated for all purposes, for the installation and maintenance of _____ only (the "Improvements"), and upon the following conditions:

I.

That Owner, his successors or assigns shall maintain and keep in sightly condition all of the Easement Use Area and the Improvements and that City and Non-City Utilities shall not be responsible for such maintenance at any time.

II.

Owner does hereby agree to defend, indemnify and hold harmless the Non-City Utilities and the City of Arlington and all of its officials, officers, agents and employees from any and all liability, claims, demands, suits, causes of action or judgments from any alleged damages arising out of any Improvements in the Easement Use Area, use of the Easement Use Area, or the Easement Use Agreement; regardless of any alleged fault, negligence or joint enterprise by the Non-City Utilities and/or the City of Arlington and all of its officials, officers, agents and employees. The Owner hereby waives any and all claims that the Owner may have arising from any alleged damages resulting from or arising out of any Improvements in the Easement Use Area, use of the Easement Use Area or the Easement Use Agreement against the Non-City Utilities and the City of Arlington. By signature of the Easement Use Agreement, Owner also accepts the terms and conditions on Exhibit No. 4 attached hereto and made a part hereof for all intents and purposes.

III.

That Owner shall arrange for all activities and Improvements in the Easement Use Area to be discontinued and removed within 30 days of notification, at the direction of City or any of the Non-City Utilities, for any reason, including but not limited to: lack of maintenance of the Easement Use Area or the Improvements; failure to provide access to the Easement Use Area or the Easement to the City, Non-City Utilities, or their designees; or a City Council directive to discontinue Owner's use of the Easement. The cost associated with the discontinuing of such activities and the removal of such Improvements, as well as repairs to property adjacent to the Easement necessitated by such discontinuation of the Easement, shall be borne by the Owner.

IV.

That Owner, his successors or assigns shall not seek compensation from City or Non-City Utilities for loss of the value of the improvements made hereunder when such improvements are required to be removed by Owner.

V.

Owner has read this Agreement and understands its terms. Owner executes it voluntarily and with full knowledge of its significance. This Agreement shall be filed of record in the Deed Records of Tarrant County, Texas, and shall bind all future owners of the Property and shall for all purposes be considered a covenant running with the land. The Owner understands and agrees that this Agreement shall be a covenant running with the land with respect to all property governed by this Agreement, and that this Agreement shall fully bind any successors, heirs, and assigns of the Owner who acquire any right, title, or interest in or to any of the property, or any part thereof, that is governed by this Agreement. Any person who acquires any right, title, or interest in or to any of the Property, or any part thereof, governed by this Agreement, thereby agrees and covenants to abide by and fully perform this Agreement.

VI.

It is further agreed that the execution of this Agreement will not constitute a waiver by the City of Arlington of the defense of governmental immunity, where applicable, or any other defense recognized by the courts of the State of Texas.

IN TESTIMONY WHEREOF, the City and Owner have executed this Easement Use Agreement on this _____ day of _____, 20_____.

*City of Arlington - Fiona M. Allen, P.E.

By: _____
Deputy City Manager

*Owner: - _____
Print Name

By: _____
Owner's Signature

NOTE: Complete Acknowledgement on following page.

NOTE: Owner should complete only the appropriate acknowledgement: some suggested options for different forms of ownership are set forth below.

THE STATE OF TEXAS §

Individual Acknowledgment

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 20____.

_____
Notary Public in and for the State of Texas

My Commission Expires: _____

THE STATE OF TEXAS §

Corporate Acknowledgment

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that same was the act of said _____, a corporation, and that he executed same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 20____.

_____
Notary Public in and for the State of Texas

My Commission Expires: _____

THE STATE OF TEXAS §

City of Arlington Acknowledgment

COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that same was the act of said _____, a municipal corporation, and that he executed same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 20____.

_____
Notary Public in and for the State of Texas

My Commission Expires: _____

EXHIBIT NO. 1
DESCRIPTION OF OWNER'S PROPERTY

Legal description of the Owner's Property as shown on the deed, including volume and page where the deed is recorded in the Tarrant County Deed Records:

EXHIBIT NO. 2
DESCRIPTION OF THE EASEMENT USE AREA
Page 1 of ____

Insert the legal description and a detailed drawing depicting the portion of the easement that the Owner may use pursuant to the Agreement.

EXHIBIT NO. 2
CROSS SECTION OF IMPROVEMENT (IF REQUIRED)

The following is a detailed cross-section drawing of the Improvement in the Easement Use Area.

EXHIBIT NO. 3

The undersigned public utility companies, using or entitled to use, under the terms and provisions of our respective franchise with the City of Arlington, or otherwise, that portion of the easement or right-of-way sought to be used by Owner in the proposed easement use agreement, do hereby consent to the joint use of the described portion of such easement or right-of-way in Lot(s) _____, Block(s) _____ of the _____ Addition of the City of Arlington, Tarrant County, Texas.

Street address of proposed easement use area property: _____

_____

Atmos Energy Company*

By: _____
(Please Print)

Title: _____
(Please Print)

Signature: _____

Time Warner Cable*

By: _____
(Please Print)

Title: _____
(Please Print)

Signature: _____

Oncor Electric Delivery Company LLC

By: _____
(Please Print)

Title: _____
(Please Print)

Signature: _____

Southwestern Bell Telephone Company (AT&T Texas)*

By: _____
(Please Print)

Title: _____
(Please Print)

Signature: _____

*Note: By signature of the Easement Use Agreement, Owner also accepts the terms and conditions on Exhibit No. 4 attached hereto and made a part hereof for all intents and purposes.

EXHIBIT NO. 4

That Owner shall and does hereby agree to indemnify, hold harmless and defend Oncor Electric Delivery Company LLC, AT&T, Time Warner Cable Company, and Atmos Energy Company ("Atmos Gas"), collectively referred to as "Non-City Utility Companies", their officers, agents and employees, from and against any and all claims, demands, losses, costs, damages, cause of action, suits and liability of any kind, including all reasonable expenses of litigation, court costs and attorney's fees, for injury to or death of any person, or for damages to Owner's property and Improvements arising out of or in any way resulting, directly or indirectly, from or incident to any activity, circumstance or connected with, Owner's use of the Improvements on the easement/right of way, the operation or existence of any Non-City Utilities Companies facilities on the easement/right of way or their proximity to the Improvements, including but not limited to, such claims, demands, causes of action, suits and liability resulting from the sole or concurrent negligence, strict liability or other fault of any of the Non-City Utilities Companies.

That Owner shall and hereby agrees, at the sole cost and expense to Owner, reimburse all reasonable costs of removal and/or relocation of any of the Non-City Utilities Companies facilities, which due to the Owner's use of the easement/right of way and in the sole judgment of any of the Non-City Utilities Companies, impair, endanger or interfere with the construction, efficiency or convenient operation and maintenance of any of the Non-City Utilities Companies present or future facilities located within the easement/right of way.