

# ENCROACHMENT AGREEMENT

(Minor Encroachment)

**THIS IS AN ENCROACHMENT AGREEMENT** between the **CITY OF SARASOTA**, a Florida municipal corporation, hereinafter referred to as "**CITY**", and **School Board of Sarasota County, 1960 Landings Boulevard, Sarasota, Florida 34231**, the owner of the minor encroachment described herein, hereinafter referred to as "**ENCROACHER**."

## WITNESSETH:

**WHEREAS, ENCROACHER** is the owner of real property known as **Bay Haven School of Basics Plus** located at **2901 West Tamiami Circle**, Sarasota, Florida; and,

**WHEREAS**, the above described real property is adjacent to public right-of-way within the City known as **under West Tamiami Circle**; and,

**WHEREAS**, on April 1, 2002, the City Commission of the City of Sarasota adopted Ordinance No. 02-4347 providing regulations applicable to the execution of Encroachment Agreements to allow the placement of privately owned improvements within the public right-of-way subject to specified conditions under appropriate circumstances; and,

**WHEREAS**, Ordinance No. 02-4347 (Section VII-1201, City Zoning Code) authorizes the City Manager to execute an Encroachment Agreement on behalf of the **CITY** to permit a "minor encroachment" as defined in the ordinance upon the recommendation of the City Engineer and the Director of Public Works; and,

**WHEREAS**, on April 7, 2003, the City Manager delegated the authority to execute a "Minor" Encroachment Agreement to the City Engineer.

**WHEREAS**, the City Engineer has found that the **two 2" security conduits** related to the real property known as **Bay Haven School of Basics Plus** will encroach upon the public right-of-way; and,

**WHEREAS, ENCROACHER** has requested permission of the City Manager to allow the above described encroachment to encroach into the public right-of-way; and,

**WHEREAS**, the City Engineer and the Director of Public Works have recommended the execution of this Encroachment Agreement to allow the minor encroachment more fully described herein.

**NOW, THEREFORE**, it is agreed between the parties as follows:

1. **GRANT OF PERMISSION:** **CITY** hereby grants unto **ENCROACHER** permission to utilize a portion of the public right-of-way known as **under West Tamiami Circle** located adjacent to the real property known as **Bay Haven School of Basics Plus** for the purpose of allowing the **two 2" security conduits** encroachment to remain, subject to all the terms and conditions of this Encroachment Agreement. Said **two 2" security conduits** encroachment is described in Exhibit "A", attached hereto and made a part hereof by reference.

2. **TERM:** This Encroachment Agreement shall be effective upon the date it is executed by both parties hereto, and shall automatically terminate as provided for in Paragraphs 8 and 9 hereof.
  
3. **SPECIAL COVENANTS: ENCROACHER** specifically covenants to:
  - a. Be solely responsible for the maintenance and repair of the **two 2” security conduits** encroachment located adjacent to the real property known as **Bay Haven School of Basics Plus**, encroaching into the public right-of-way of **under West Tamiami Circle**, including maintaining the **two 2” security conduits** encroachment in a neat and clean condition.
  
  - b. Be solely and exclusively responsible for assuring that there shall be no further or additional encroachments into the public right-of-way from the real property known as **Bay Haven School of Basics Plus** unless same is approved by a written amendment to this Agreement or by another Encroachment Agreement.
  
  - c. In the event any portion or portions of the existing encroachment into the public right-of-way are destroyed by fire, hurricane, tornado, any other act of God or any other means, **ENCROACHER** specifically covenants not to build, construct, rebuild or reconstruct anything which encroaches into the public right-of-way unless same is approved by a written amendment to this Agreement or by another Encroachment Agreement.
  
  - d. At all times during the term of this agreement the **CITY** shall have the ability, in its sole and absolute discretion, to remove the encroachment should same be necessary in order to access public utilities whether above or below ground. **ENCROACHER** shall be required to coordinate and pay the cost of any utility relocation made necessary by the encroachment.
  
4. **HOLD HARMLESS:** CITY and ENCROACHER hereby agree that CITY shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by any person caused by or resulting from the presence of any of the encroachments permitted by this Agreement; whether or not such loss, injury, death or damage is caused by or in any manner results from, or arises out of any act, omission or negligence of ENCROACHER or any other person, and whether or not such loss, injury, death or damage is sustained or incurred by a person within the public right of way or on private property. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, agents or employees thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto as provided in Section 768.28, Florida Statutes, as amended from time to time or any other law providing limitations on claims.
  
5. **FUTURE IMPROVEMENTS:** CITY and ENCROACHER agree that no future improvements to the encroachment shall be constructed in the public right-of-way known as **under West Tamiami Circle**. However, this prohibition shall not apply to any necessary minor repairs to the **two 2” security conduits** encroachment, except as agreed to in Paragraph 3 c. above.

6. **TRANSFERABILITY:** This Agreement is personal to **ENCROACHER** and not assignable or transferable. In the event a subsequent owner of the above described real property desires to maintain the minor encroachment permitted by the terms of this Agreement, the subsequent owner may request to enter into a new Encroachment Agreement with **CITY**.
  
7. **INSURANCE: (The City reserves the right to waiver the insurance requirements at its discretion):** **ENCROACHER**, at its sole expense, shall keep the two 2" electrical security conduits encroachment insured throughout the entire term of this Encroachment Agreement, in the following minimum amounts: Commercial General Liability in the amount of One Million Dollars (\$1,000,000.00) per occurrence, and Two Million Dollars (\$2,000,000.00) general aggregate, naming the "City of Sarasota" as an additional insured with respect to the encroachment.  
**CITY** shall be named as an additional insured. The Certificate of Insurance shall be delivered to the City Engineer on or before the date this Encroachment Agreement is executed by both parties hereto. Similarly, Certificates of Insurance shall be delivered to the City Engineer on each anniversary date of each insurance policy. Each Certificate of Insurance shall provide for not less than thirty (30) days advance written notice to the City Engineer in the event of cancellation of coverage, and shall name the City of Sarasota as certificate holder. **ENCROACHER** shall be deemed in compliance with all of the terms and conditions of this Section 7 regarding insurance if **ENCROACHER** provides satisfactory evidence to the City Engineer that **ENCROACHER** is self insured.
  
8. **TERMINATION:** In the event that the **CITY** shall determine, in its sole and absolute discretion, that the public right-of-way known as **under West Tamiami Circle** located adjacent to the real property known as **Bay Haven School**, upon which the **two 2" security conduits** encroach, is needed by the **CITY** for a public purpose such as utility installation, utility repair, road reconstruction or other public purpose; then the **CITY** shall have the sole and absolute right to terminate this Encroachment Agreement, or in cooperation with the School Board of Sarasota County to relocate **two 2" security conduits** encroachment from the public right-of-way at School Board expense, upon giving **ENCROACHER** thirty (30) days notice thereof. **ENCROACHER** covenants to remove or relocate the **two 2" security conduits** encroachment from the public right-of-way known as **under West Tamiami Circle** prior to the effective date of said termination notice. Additionally, this Encroachment Agreement shall automatically terminate upon the transfer of ownership of the above described real property from **ENCROACHER** to any third party. In the event that the subject encroachment remains on the public right-of-way after the termination date, the **CITY** shall have the right to remove the encroachment without any liability to **ENCROACHER** or to any other person or entity.
  
9. **DEFAULT:** Should **ENCROACHER** fail at any time to faithfully perform any of the covenants contained herein, on their part to be kept, **CITY** shall have the right to cancel this Encroachment Agreement pursuant to the terms set forth in this Section 9 and **CITY** shall have the right to remove the encroachments after such termination. Exercise of this right to cancel shall be without liability to the **CITY** or **ENCROACHER** or any other person or entity, which might result from cancellation. Should any claim, demand, suit or action be made or filed against **CITY**, upon cancellation of this Encroachment Agreement, by any person or entity whatsoever, the indemnification provisions of Paragraph 4 above shall be applicable. In the event of such default, **CITY** shall give **ENCROACHER** written notice to the address specified herein, providing for fifteen (15) days in which **ENCROACHER**

may remedy said default. If said default is not remedied to the satisfaction of CITY, CITY shall give ENCROACHER written notice requiring ENCROACHER to remove the two 2" security conduits encroachment within thirty (30) days from the effective date of said termination. In the event that ENCROACHER fails to remove the two 2" security conduits encroachment within said time period, the CITY may possess and remove the two 2" security conduits encroachment from the public right-of-way of under West Tamiami Circle without any liability to ENCROACHER or any other person or entity thereof.

10. **DECISION OF CITY:** ENCROACHER acknowledges that CITY retains the right to make certain decisions pursuant to the terms of this Encroachment Agreement. These decisions include, but are not limited to determinations made pursuant to Paragraph 8; and determination for default pursuant to Paragraph 9. ENCROACHER hereby has right to appeal any decision of CITY with regard to this Encroachment Agreement to the Director of Neighborhood and Development Services.
11. **DISCLAIMER OF JOINT VENTURE:** CITY and ENCROACHER acknowledge that the parties are not engaging in a joint venture.
12. **ATTORNEY'S FEES:** Should it be necessary for CITY to bring any action against ENCROACHER to enforce any of the covenants, provisions or conditions of this Encroachment Agreement, ENCROACHER agrees to pay all costs attendant thereto, including a reasonable attorney's fee to the attorney representing the CITY, and such obligation shall apply to declaratory relief, if necessary, to interpret any of the terms hereof. The obligation of ENCROACHER shall include attorney's fees incurred by CITY at the trial court or appellate court level of proceedings.
13. **NOTICES:** Any notice given ENCROACHER or CITY pertaining to the terms and conditions of this Encroachment Agreement shall be addressed to:

**City of Sarasota, Florida**

Alexandrea DavisShaw, P.E., P.T.O.E.  
General Manager and City Engineer

Post Office Box 1058

Sarasota, FL 34230-1058

**Encroacher**

School Board of Sarasota County  
Bay Haven School of Basics Plus  
Shirley Brown, Chair

**IN WITNESS WHEREOF** the parties hereto have executed this Encroachment Agreement in duplicate, either of which may serve as the original:

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by the **CITY OF SARASOTA, FLORIDA.**

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010 by the **School Board of Sarasota County.**

**CITY OF SARASOTA**

By: \_\_\_\_\_  
**Alexandrea DavisShaw, P.E., P.T.O.E.**  
**General Manager and City Engineer**

Witnesses as to execution by:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Agreement and terms thereof accepted by:

**ENCROACHER**

By: \_\_\_\_\_  
**School Board of Sarasota County**  
**Shirley Brown, Chair**

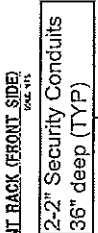
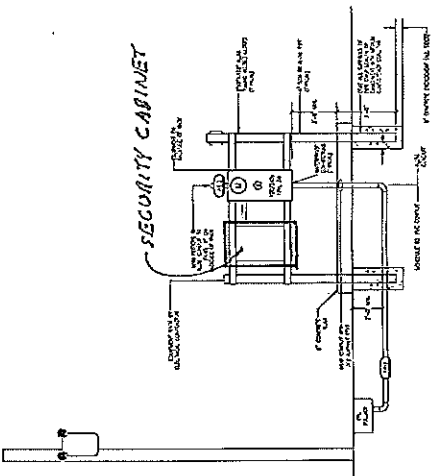
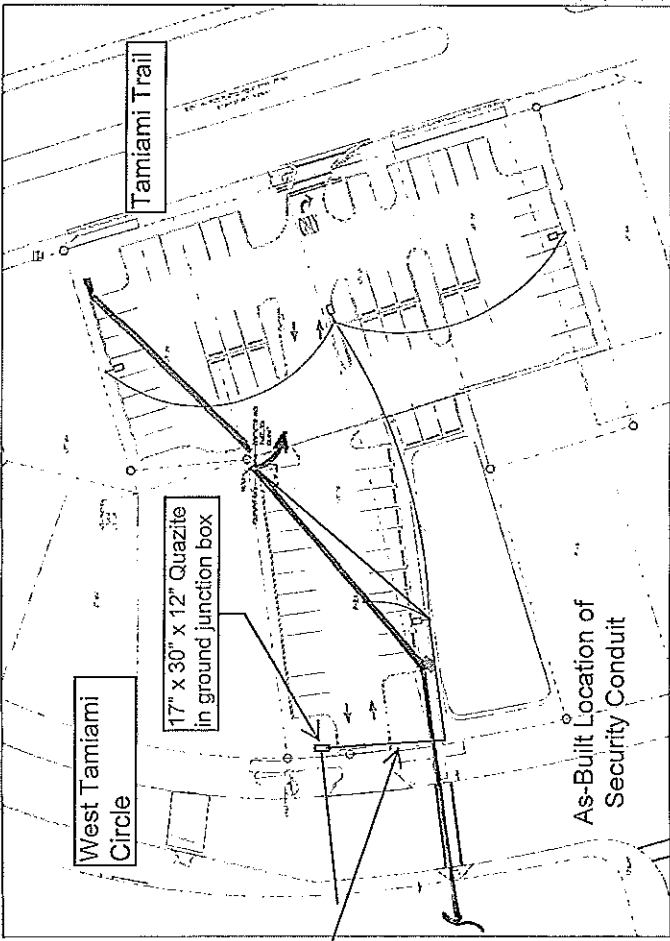
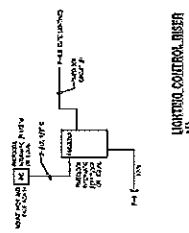
EXHIBIT A

**ELECTRICAL FEEDER WIRE SCHEDULE**

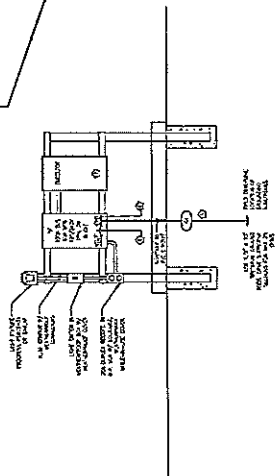
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**ELECTRICAL RISER KEY NOTES**

1. ALL RISERS SHALL BE INSTALLED IN ACCORDANCE WITH THE NATIONAL ELECTRICAL CODE (NEC) AND ALL APPLICABLE LOCAL AND STATE CODES.
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2-2" Security Conduits  
36" deep (TYP)



**CAVALDRE ENGINEERING, INC.**  
1111 W. TAMiami TRAIL, SUITE 100  
TAMiami, FL 33613  
TEL: 813-885-1111  
WWW.CAVDRE.COM

**BAY HAVEN SCHOOL**  
AUXILIARY PARKING LOT  
TAMiami, FL 33613

**SITE LIGHTING PLAN**

**E0.0**

DATE: 11/11/11

**SITE ELECTRICAL PLAN**  
SCALE: 1" = 30'