



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 - *FRANK KOVACH*, the owner of the minor encroachment described herein, hereinafter referred to as "ENCROACHER."

WITNESSETH:

WHEREAS, ENCROACHER is the owner of real property known as School Board of Sarasota County located at 3201 North Orange Avenue, Sarasota, Florida 34234; and,

WHEREAS, the above described real property is adjacent to public right-of-way within the City known as Orange Avenue; 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 installation of four 4" PVC conduit sleeves for the irrigation, power and other SCSB utilities crossing relocated Orange Avenue related to the real property known as School Board of Sarasota County 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 Orange Avenue located adjacent to the real property known as School Board of Sarasota County for the purpose of allowing the installation of four 4" PVC conduit sleeves for the irrigation, power and other SCSB utilities crossing relocated Orange Avenue encroachment to remain,

subject to all the terms and conditions of this Encroachment Agreement. Said installation of four 4" PVC conduit sleeves for the irrigation, power and other SCSB utilities crossing relocated Orange Avenue encroachment is described in Exhibit "A" and pictorially in Exhibit "B", 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 installation of four 4" PVC conduit sleeves for the irrigation, power and other SCSB utilities crossing relocated Orange Avenue encroachment located adjacent to the real property known as School Board of Sarasota County, encroaching into the public right-of-way of Orange Avenue, including maintaining the installation of four 4" PVC conduit sleeves for the irrigation, power and other SCSB utilities crossing relocated Orange Avenue 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 School Board of Sarasota County 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 whatsoever who may be using, occupying or present at the public right-of-way of Orange Avenue adjacent to School Board of Sarasota County whether such loss, injury, death or damage shall be caused by or shall in any manner result from, or arise out of any act, omission or negligence of ENCROACHER or any other person. ENCROACHER hereby covenants and agrees to indemnify and hold harmless CITY during the term of this Encroachment Agreement from any and all claims, losses, liabilities, injuries, death or damages whatsoever arising out of the existence of the minor encroachment allowed by CITY under the terms of this Agreement.
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 Orange Avenue. However, this prohibition shall not apply to any necessary minor repairs to the installation of four 4" PVC conduit sleeves for the irrigation, power and other SCSB utilities crossing relocated Orange Avenue 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 waive the insurance requirements at its discretion): ENCROACHER, at its sole expense, shall keep the installation of four 4" PVC conduit sleeves for the irrigation, power and other SCSB utilities crossing relocated Orange Avenue 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.
8. **TERMINATION:** In the event that the CITY shall determine, in its sole and absolute discretion, that the public right-of-way known as Orange Avenue located adjacent to the real property known as School Board of Sarasota County, upon which the installation of four 4" PVC conduit sleeves for the irrigation, power and other SCSB utilities crossing relocated Orange Avenue encroach, is needed by the CITY for any purpose whatsoever, then the CITY shall have the sole and absolute right to terminate this Encroachment Agreement, upon giving ENCROACHER thirty (30) days notice thereof. ENCROACHER covenants to remove the installation of four 4" PVC conduit sleeves for the irrigation, power and other SCSB utilities crossing relocated Orange Avenue encroachment from the public right-of-way known as Orange Avenue 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 automatically cancel this Encroachment Agreement and CITY shall have the right to immediately remove the installation of four 4" PVC conduit sleeves for the irrigation, power and other SCSB utilities crossing relocated Orange Avenue encroachment. 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 installation of four 4" PVC conduit sleeves for the irrigation, power and other SCSB utilities crossing relocated Orange Avenue encroachment within thirty (30) days from the effective date of said termination. In the event that ENCROACHER fails to remove the installation of four 4" PVC conduit sleeves for the irrigation, power and other SCSB utilities crossing relocated Orange Avenue encroachment within said time period, the CITY may possess and remove the installation of four 4" PVC conduit sleeves for the irrigation, power and other SCSB utilities crossing relocated Orange Avenue encroachment from the public right-of-way of Orange Avenue 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 acknowledges it has no right to appeal any decision of CITY with regard to this Encroachment Agreement. ENCROACHER hereby covenants that there is no right of appeal and any decision

of CITY with regard to this Encroachment Agreement shall be final and binding upon both parties.

- 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

Frank Kovach
School Board of Sarasota County

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 School Board of Sarasota County - Frank Kovach

CITY OF SARASOTA

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

Agreement and terms thereof accepted by:

ENCROACHER

By: _____
School Board of Sarasota County - Frank Kovach

Witnesses as to execution by:

Witness

Witness