

# ACQUIESCENCE TO ENCROACHMENT

## GUIDELINES

1. Establish a review schedule. The review schedule begins when the application for acquiescence to encroachment is applied for and the \$100.00 processing fee is paid. A copy of the Acquiescence to Encroachment form is attached to the application.
2. Review Schedule:
  - A. The City requires a sealed survey of the property certified to by a professional public surveyor, licensed to do work in the State of Texas. The survey is furnished to the City by the property owner or applicant at their expense and before the field investigation is authorized.
  - B. Field investigation by Inspection Division Staff
  - C. Field investigator submits written report to the Public Works Director
  - D. Applicant must provide to the City a letter from all of the utility companies who have a right to use the subject easement acknowledging and accepting the encroachment.
  - E. The Public Works Director either accepts Acquiescence to Encroachment or rejects the application. If accepted, the City Manager executes on City's behalf.
  - F. Filing Procedure: Applicant's responsibility



ACQUIESCENCE TO ENCROACHMENT

THE STATE OF TEXAS       §  
COUNTY OF HARRIS       §

WHEREAS, \_\_\_\_\_  
(hereinafter referred to as the "Owner") is the owner of the following  
described property situated in Harris County, Texas:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

WHEREAS, the Owner owns a structure within or encroaching upon the  
area of said easement, as shown on the plat attached hereto as Exhibit  
"A" and made a part hereof, and has requested that the City of West  
University Place, Texas ("City") give its acquiescence to said  
encroachment; and

WHEREAS, the Owner has informed the City that it has or will  
obtain acquiescence or consent from any other utilities or entities  
having an interest in or jurisdiction over said easement;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that, subject to  
all terms and conditions hereof, the City hereby acquiesces to the  
maintenance by the Owner, its successors and assigns, of the following  
structure which is now an encroachment upon the area of said easement:

\_\_\_\_\_

\_\_\_\_\_

said structure being located within the portion of said easement  
("Encroachment Area") which is shown on Exhibit "A" attached hereto and  
made a part hereof.

This acquiescence applies only to said structure as it now exists, and this acquiescence shall not apply to said structure, or to any separately-usable part of said structure if: (i) it is hereafter destroyed, removed, structurally altered or (ii) it is damaged to such an extent that it loses more than half of its value because of such damage.

Nothing in this acquiescence is intended to limit or to effect any of the City's regulatory or police powers, and it is the responsibility of the Owner to comply with all applicable rules, regulations and ordinances of the City which arise out of the City's regulatory or police powers, including by not limited to the City's zoning, fence and building ordinances. This acquiescence shall never be construed to be a variance, special exception, permit, ruling or order of any kind under or pursuant to any of said rules, regulations or ordinances, but instead, this acquiescence relates solely to the City's property rights with respect to the easement referred to above. Should any such variance, special exception, permit, ruling or order of any kind be required now or hereafter, it shall be the responsibility to the Owner to seek it separately.

In consideration of the acquiescence hereinabove provided, the Owner hereby binds itself, its successors, assigns and grantees, to indemnify and hold the City, its successors and assigns and their officers, agents, employees and contractors, harmless from all claims for injury to or death of any person or for damage to property arising out of or in any way connected with the construction or maintenance of said structure within said easement area, or which injuries, death or damages would not have occurred but for the presence of said structure within the easement area, including injuries, deaths or damages caused by the joint negligence of the City, its successors or assigns, or their officers, agents, employees or contractors and any other party or parties, but excluding injuries, death or damages caused solely by the negligence of the City, its successors or assigns or their officers, agents, employees or contractors.

The Owner agrees for itself and its successors, assigns and grantees, that if the City or its successors or assigns, shall at any time, in its sole discretion, determine that it is necessary to do so for the purpose of properly maintaining or installing facilities within such easement, it shall be privileged to remove or alter the above-mentioned structure, or any part thereof, and the City shall not be obligated in any manner to restore the above-mentioned structure so altered or removed, but that any restoration shall be made by the Owner at its sole cost and expense; and the Owner further agrees, for itself and its successors, assigns and grantees, to pay the cost of all additional expenses incurred by the City in the proper maintenance or installation of its facilities, which additional expenses would not

have occurred but for the presence of said structure within the easement area. The Owner for itself, its successors, assigns and grantees hereby releases the City, its successors and assigns and their officers, agents, employees and contractors, from any and all liability for damage caused to the above-mentioned structure by any such removal or alteration and further agrees to pay the City, its successors and assigns, the cost of removing or altering such structure upon receipt of its billing therefor. The Owner for itself, its successors, assigns and grantees, hereby further releases the City, its successor and assigns, and their officers, agents, employees and contractors from any and all liability for loss of or damage to such structure or any other real or personal property which may be caused by, result from, or be related to, the presence or malfunctioning of its facilities within the easement and regardless of whether their negligence may contribute to such loss or damage.

The Owner further agrees for itself, its successors, assigns, and grantees, that if the City, its successors or assigns, shall at any time, and because of the presence of such structure within the area of said easement, be ordered by any public authority having jurisdiction to remove or relocate its facilities, it shall be privileged to comply with such order at the Owner's cost, unless the Owner, its successors, assigns or grantees, shall alter or remove said structure to the satisfaction of such public authority upon reasonable notice to do so; and if such facilities are removed or relocated by the City, its successors or assigns, the Owner for itself, its successors, assigns and grantees, agrees to pay the cost thereof upon the receipt of its billing therefor.

The exercise and enjoyment by the Owner's successors, assigns and grantees of the rights and privileges to which the City has herein acquiesced shall constitute affirmative acceptance by such successors, assigns and grantees of the terms and conditions herein contained; provided, however, that the City for itself, its successors and assigns, hereby reserves the right to require that any such successors, assigns or grantees further signify, in a recordable instrument, acceptance of such terms and conditions, and should any such successor, assign, or grantee refuse upon written request to execute such instrument, the rights and privileges herein acquiesced to shall thereupon automatically terminate. This Acquiescence shall not inure to the benefit of any person other than the above-named Owner, its successors, assigns and grantees, or to the benefit of any property other than the above-described property.

This Acquiescence shall not effect until it has been signed and acknowledged by the Owner, recorded in the appropriate real property records and delivered to the City.

EXECUTED this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

ATTEST:

CITY OF WEST UNIVERSITY PLACE

\_\_\_\_\_  
City Secretary (seal)

By: \_\_\_\_\_  
City Manager

ACCEPTED AND AGREED TO this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_

STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on \_\_\_\_\_ as  
\_\_\_\_\_, by \_\_\_\_\_ of the City of West University Place, Texas.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_ of \_\_\_\_\_,  
a \_\_\_\_\_ corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_,  
partner(s) on behalf of \_\_\_\_\_, a  
partnership.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Contacts to obtain letters from Utility Companies:**

**CenterPoint Energy:**

Property Rights	713-207-5769
	713-207-6348

**Comcast:**

Pete Dineen, Director of Construction	713-341-8787
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**AT&T:**

Jerry Ray, Manager-Engineering Design	281-379-7524
Amanda Burns, Clerk	281-379-7518