

# RIGHT-OF-WAY AGREEMENT NO. 2016-01

## "TERMS AND CONDITIONS"

### SECTION 1. DEFINITIONS

1.1 "Grantor" means the City of Stillwater, Oklahoma, a municipal corporation.

1.2 "Grantee" means Benjamin D and Mary Suzanne Frits of Stillwater, Oklahoma.

1.3 "Permit" means the non-exclusive and revocable authorization or renewal thereof for the construction in or use of streets or rights-of-way or easements.

1.4 "Street" means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas.

### SECTION 2. GRANT OF PERMIT

#### 2.1 Grant

(A) Grantor hereby grants to Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the Street within the Permit Area to construct, operate, maintain, reconstruct, and repair a water service line adjacent to property addressed as 2820 E. Sunrise.

(B) This Agreement is not a warranty of title or interest in any right-of-way; it does not provide the Grantee any interest in any particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not deprive the Grantor of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the Grantor's Streets covered by this Agreement, including without limitation, the right to perform work on its roadways, rights-of-way, utilities or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

(C) This Agreement is subject to the general lawful police power of Grantor affecting matters of municipal concern and not merely existing contractual rights of Grantee. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor.

#### 2.2 Use of Public Streets and Ways

Subject to Grantor's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, and under the public Streets, including rights-of-way and public easements within the Permit Area a water service line adjacent to property addressed as 2820 E Sunrise. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures, now in effect or enacted hereafter prior to commencing any construction activities. Grantee, through this Agreement, is granted rights to utilize Grantor's public rights-of-way and public utility easements within the Permit Area in compliance with all applicable Grantor construction codes and procedures.

### **2.3 Duration**

The term of this Permit and all rights, privileges, obligations and restrictions pertaining thereto shall be for the period of ownership of the property by Benjamin D. and Mary Suzanne Frits from the effective date of this Permit unless extended or sooner terminated as provided herein.

### **2.4 Effective Date**

The effective date of this Permit is the 20th day of June, 2016.

### **2.5 Permit Nonexclusive**

This Permit shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any street, right-of-way, easement, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may at any time grant authorization to use the public rights-of-way for any purpose it deems appropriate, upon such terms and conditions as Grantor deems appropriate.

### **2.6 Police Powers**

Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof.

### **2.7 Relations to Other Provisions of Law**

This Permit and all rights and privileges granted under the Permit are subject to applicable law over the Permit term. In the case of any conflict between this Permit Agreement and any ordinance of general application enacted pursuant to the Grantor's police power, the ordinance shall govern. Grantee hereby waives its right to challenge the lawfulness of a particular enactment, including the grounds that a particular action is an unconstitutional impairment of contractual rights. The Permit issued and the Permit fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax, unless expressly stated herein.

## **SECTION 3. PERMIT FEE**

As compensation for the benefits and privileges granted under this Agreement and in consideration of permission to use Grantor's Streets, Grantee shall pay as a Permit fee to Grantor, a one-time payment in the amount of \$ 200.00 (fee determined based on review of project), due prior to issuance of the Permit.

## **SECTION 4. FINANCIAL AND INSURANCE REQUIREMENTS**

### **4.1 Insurance Requirements**

(A) General Requirement. Grantee must have adequate insurance during the entire term of this Permit to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Agreement or involve Grantee, its agents, representatives, contractors, subcontractors and their employees. Grantor shall be named as an additional insured under Grantee's policy.

(B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth. The Grantee shall obtain policies for the following initial minimum insurance limits:

Commercial General Liability: Twenty-five Thousand dollars (\$25,000.00) for any claim or to any claimant who has more than one claim for loss of property arising out of a single act, accident, or occurrence; One Hundred Thousand Dollars (\$100,000.00) to any claimant for his claim for any other loss arising out of a single act, accident, or occurrence; One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single occurrence or accident.

#### **4.2 Indemnification**

Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, boards, commissions, agents, and employees against any and all claims, including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, operation or repair of its water service line adjacent to property addressed as 2820 E Sunrise. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, boards, commissions, agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as: 1, to Persons or property, in any way arising out of or through the acts or omissions of the Grantee, its contractors, subcontractors and their officers, employees, or agents, or to which the Grantee's negligence shall in any way contribute.

### **SECTION 5. GENERAL STREET USE AND CONSTRUCTION**

#### **5.1 Construction**

(A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Permit, Grantee may perform all construction necessary for the operation of its water service line, adjacent to property addressed as 2820 E Sunrise. All construction and maintenance of any and all facilities within Streets incident to Grantee's System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities within the Streets.

(B) Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. All construction shall be performed in compliance with this Permit and all applicable City Ordinances and Codes. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees and franchisees so as to reduce as far as possible the number of Street cuts.

#### **5.2 Location of Facilities**

Within forty-eight (48) hours after notification of any proposed Street excavation, Grantee shall, at Grantee's expense:

- Mark on the surface all of its underground facilities within the area of the proposed excavation or construction;
- Notify the excavator/contractor of any unlocated underground facilities in the area of the proposed excavation or construction; or

- Notify the excavator/contractor that Grantee does not have any underground facilities in the vicinity of the proposed excavation or construction.

### **5.3 Relocation**

Grantor shall have the right to require Grantee to change the location of any part of Grantee's System within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Grantee.

### **5.4 Restoration of Streets**

(A) Whenever Grantee disturbs the surface of any Street for any purpose, Grantee shall promptly restore the Street to at least its prior condition. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall refill within twenty-four (24) hours the opening and restore the surface to a condition satisfactory to Grantor.

(B) If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration in accordance with applicable regulations of the City within the area affected by the excavation. Grantor may, after providing notice to Grantee, refill or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, remove or repair any work done by Grantee which, in the determination of Grantor, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Permit, and this Section in particular, shall be done in strict compliance with all rules, regulations and ordinances of Grantor. Prior to making any Street or right-of-way cuts or openings, Grantee shall provide written notice to Grantor.

### **5.5 Maintenance and Workmanship**

Grantee's work shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Streets by, or under, Grantor's authority.

### **5.6 Reservation of Grantor Street Rights**

Nothing in this Agreement shall prevent Grantor or utilities owned, maintained or operated by public entities other than Grantor, from constructing sewers; grading, paving, repairing or altering any Street; repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's System. However, if any of Grantee's work interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, Grantee's work shall be removed or replaced in the manner Grantor shall direct, and Grantor shall in no event be liable for any damage to any portion of Grantee's work. Any and all such removal or replacement shall be at the expense of Grantee. Should Grantee fail to remove, adjust or relocate its facilities by the date established by Grantor's written notice to Grantee, Grantor may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by Grantor due to Grantee's delay.

### **5.7 Discontinuing Use of Facilities**

Whenever Grantee intends to discontinue using any facility within the Streets, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, Grantor may require Grantee to remove the facility from the Street or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Street, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, public, governmental, or educational purposes.

### **5.8 Repair, Restoration and Relocation**

#### **(A) Repair and Restoration of Property.**

1. The Grantee shall protect public and private property from damage. If damage occurs and Grantee is aware of the said damage, the Grantee shall promptly notify the property owner within twenty-four (24) hours.

2. If public or private property is disturbed or damaged, the Grantee shall restore the property to its former condition, normal wear and tear excepted. If restoration of public right-of-way or other property of the Grantor is not satisfactorily performed within a reasonable time, the Grantor may cause the repairs to be made at the Grantee's expense and recover the cost of those repairs from the Grantee.

(B) Relocation of System For and By Grantor. The Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the public right-of-way or on any other property of the Grantor in the case of fire, disaster, or other emergency, or when a project or activity of the Grantor's makes the removal, replacement, modification or disconnection necessary or less expensive for the Grantor.

(C) Relocation for Other Permit Holders. If any removal, replacement, modification or disconnection is required to accommodate the construction, operation or repair of the facilities or equipment of another Permit holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee and the other Permit holder shall determine how costs associated with the removal or relocation shall be allocated.

(D) Relocation for Other Permittees. At the request of any Person holding a valid permit and upon ten (10) business days advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permittee, and Grantee may require payment in advance.

**5.9 Standards**

The Grantee must comply with all safety requirements, rules and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its System.

**SECTION 6. PERMIT VIOLATIONS; REVOCATION OF PERMIT**

Procedure for Remedying Permit Violations. In the event that Grantee transfers its interest herein, its successor shall provide its mailing address and telephone number to Grantor no later than ten (10) days after the transfer.

**SECTION 7. SEVERABILITY**

If any Section, subsection, paragraph, term or provision of this Permit is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Permit, all of which will remain in full force and effect for the term of the Permit.

**SECTION 8. MISCELLANEOUS PROVISIONS**

**8.1 Maintenance**

The responsibility to maintain the private use of the public way is the grantee's. The City of Stillwater shall not be held responsible for maintaining private uses located within the public way under this agreement.

**8.2 Notices**

Throughout the term of the Agreement, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from either party shall be effective under the following circumstances: (a) upon receipt when hand-delivered with receipt of acknowledgement attached; (b) upon receipt when sent certified or registered mail; or (c) within five (5) business days after having posted in the regular mail, unless otherwise specified within this Agreement.

At the effective date of this Agreement, Grantee's addresses shall be:

Benjamin D and Mary Suzanne Frits  
1422 N Hightower Street  
Stillwater, Ok 74075

At the effective date of this Agreement, Grantor's address shall be:

City of Stillwater  
City Clerk  
P.O. Box 1449  
Stillwater, OK 74076

**8.3 Binding Effect**

This Permit shall be binding upon the parties hereto, their permitted successors and assigns.

**8.4 Authority to Amend**

This Permit may be amended at any time by written agreement between the parties.

**8.5 Governing Law**

This Agreement shall be governed in all respects by the laws of the State of Oklahoma except to the extent that it is superceded by federal law or regulation.

**Acceptance of Terms and Conditions:**

Grantee Name: Benjamin D & Mary Suzanne Frits

Title: Owners

Signature: *Benjamin D Frits*

Date: 6/10/16

Signature: *Mary Suzanne Frits*

Date: June 10, 2016

STATE OF OKLAHOMA )

) ss.

COUNTY OF PAYNE )

Before me, a Notary Public in and for said County and State on this 10 day of June, 2016, personally appeared, Benjamin D Frits and Mary Suzanne Frits, husband and wife, to me known to be the identical persons who subscribed the name of the maker thereof to the foregoing instrument and acknowledged to me that he/she/they executed the same as his/her/their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

*Kathie Parham*

NOTARY PUBLIC

My Commission Expires: 12/22/16

My Commission Number: 20797



CITY OF STILLWATER, OKLAHOMA

\_\_\_\_\_  
Norman McNickle, City Manager

Approved as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
John E. Dorman, City Attorney