ENCROACHMENT AGREEMENT FOR INSTALLATION OF PRIVATE IMPROVEMENTS WITHIN PUBLIC RIGHT OF WAY AT 704 LAUREL AVE, MENLO PARK, CA

THIS AGREEMENT, dated this 31ST day of January, 2020, is by and between the City of Menlo Park, a political subdivision of the State of California, hereinafter referred to as "City", and Edward Nickerson, fee title owner(s) (the “Owner”) of the real property commonly known as 704 Laurel Ave, and more particularly outlined in the legal description attached hereto as Exhibit A (the "Property") for the use of, maintenance, and repair of a privately owned retaining wall within the public right-of-way (the "ROW") in the City of Menlo Park.

RECITALS

WHEREAS, OWNER is proposing to maintain the retaining wall (the “Facility”) within City ROW, as depicted on Exhibit B (the “Encroachment Area”), and incorporated into this Encroachment Agreement.

WHEREAS, the Facility has been reviewed, and meets the satisfaction of, all necessary City Departments including approval from the Director of Public Works.

WHEREAS, as a result of the foregoing, the City is requiring an Agreement for the ownership, liability, and maintenance of said Facility prior to the commencement of its construction.

NOW, THEREFORE, it is agreed by and between the City and Owner hereto as follows:

CONDITIONS OF AGREEMENT

1. Access
   Owner agrees to the following regarding access to the ROW within the footprint of the Facility:

   a. Owner agrees to provide access to the City, and any public utility company, requesting entry to any existing utilities within the footprint of the Facility.

   b. Owner agrees to remove the Facility upon receipt of a 60-day advance notification from the City, at the City’s sole and absolute discretion. Costs for removal of the Facility shall be borne by the Owner.
2. Owner shall be responsible for any and all maintenance and repair of the Facility and the ROW in the vicinity of the Facility and shall keep the Facility and the ROW in good condition and repair, to the satisfaction of the City, at all times.

3. Owner agrees to obtain all necessary permits from the City for maintenance, removal, repair or replacement of the Facility. Permits may include, but are not limited to: Planning Permits, Building Permits, or Engineering / Encroachment Permits. Additionally, Owner shall obtain all appropriate permits and consents required by applicable law before performing future construction work within the Encroachment Area.

4. In the event that Owner fails to abide by the terms of this Agreement after fifteen (15) days prior notice, the City may enter and repair the Facility and/or ROW, or, remove the Facility at the Owner’s cost and Owner shall reimburse City for such costs within ten (10) days of demand.

5. The Owner shall indemnify and hold harmless the City, its subsidiary agencies, their officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, and on account of, injuries to or death of any person or damage to the ROW or property within the ROW resulting from the existence of the Facility or maintenance and/or lack of maintenance of the Facility required by this Agreement. The duty of the Owner to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require the Owner to indemnify the City, its subsidiary agencies, their officers, agents, employees and servants against any responsibility to liability in contravention of Section 2782 of the California Civil Code.

6. Owner shall not construct any new structures or other permanent improvements within the Encroachment Area without City’s prior written approval. City reserves the right to continued use of the Encroachment Area for any, and all, Public purposes, and or, utilities.

7. The covenants and conditions in this Agreement, including, but not limited to, indemnification of the City, shall run with the land commonly known as 704 Laurel Ave, Menlo Park, CA, burden the Property and bind and inure to the benefit of the City and Owner and their respective successors and assigns.

8. This Agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one instrument.

9. In the event of any litigation arising out of, or to, enforce the terms and provisions of this Agreement, the prevailing party in any such litigation shall be entitled to recover its attorneys’ fees and costs of suit.

Attachments: Exhibit A Legal Description
Exhibit B Site Plan / Encroachment Area

[SIGNATURES APPEAR ON NEXT PAGE]
IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

OWNER:

[Signature]
Name: AKA Edward D. Nickerson

Date: 1/24/20

APPROVED AS TO FORM:

[Signature]
For: William L. McClure, City Attorney

Date: 2/4/2020

CITY OF MENLO PARK:

[Signature]
Nicole H. Nagaya, Interim Public Works Director

Date: 1/24/2020

ATTEST:

[Signature]
Judi A. Herren, City Clerk

Date: 2/6/2020
State of California  
County of San Mateo County  

On January 24, 2020 before me, Neetu Salwan, Notary Public, personally appeared, Nicole H. Nagaya who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]

Neetu Salwan  
Notary Public, San Mateo County  
Commission #2278678  
Expires 02-24-2023
State of California  
County of San Mateo County  

On January 24, 2020 before me, Neetu Salwan, Notary Public, personally appeared, 

Edward O. Nickerson  

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Neetu Salwan  
Notary Public, San Mateo County  
Commission #2278678  
Expires 02-24-2023
EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MENLO PARK, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 1, BLOCK 5, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "MENALTO PARK, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON December 23, 1925 IN BOOK 13 OF MAPS AT PAGE 19.

APN: 062-233-010