

ORDINANCE NO. 7654-20

AN ORDINANCE AUTHORIZING AN ENCROACHMENT WITHIN THE 28TH STREET RIGHT OF WAY, IN THE CITY OF NEWPORT NEWS, VIRGINIA, AS MORE PARTICULARLY SET FORTH HEREIN, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST AN ENCROACHMENT AGREEMENT BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA AND THE NEWPORT NEWS REDEVELOPMENT AND HOUSING AUTHORITY.

WHEREAS, the Council of the City of Newport News, Virginia is authorized, pursuant to Virginia Code § 15.2-2009 and § 15.2-2011, to permit encroachments over, under, or in certain public ways within the City of Newport News, Virginia; and

WHEREAS, the Newport News Redevelopment and Housing Authority (“NNRHA”), owns two parcels of real property (collectively, “the Property”) known, respectively, as 2714 Jefferson Avenue (Tax ID: 306.0303-09) and 2812 Jefferson Avenue (Tax ID: 306.0302-05), Newport News, Virginia, more fully described as:

2714 Jefferson Avenue (Tax ID: 306.0303-09)

All those certain lots, pieces or parcels of land situate, lying and being in the City of Newport News, Virginia, known, numbered and designated as Lot 31A, as shown on that certain plat entitled “Property Line Vacation Plat, Property of the Newport News Redevelopment and Housing Authority Lots 31 Thru 44 - Block 121, Map of Part of the City of Newport News (P.B. 1- PG. 3)” prepared by Alfonso & Associates, Inc., dated April 2, 2018, which was recorded as Instrument Number 180009950 in the Clerk’s Office of the Circuit Court for the City of Newport News, Virginia, on August 1, 2018;

and

2812 Jefferson Avenue (Tax ID: 306.0302-05)

All those certain lots, pieces or parcels of land situate, lying and being in the City of Newport News, Virginia, known, numbered and designated as Lot 29A, as shown on that certain plat entitled “Property Line Vacation Plat, Property of the Newport News Redevelopment and Housing Authority Lots 29 Thru 44-A - Block 139, Map of Part of the City of Newport News (P.B. 1- PG. 3)” prepared by Alfonso & Associates, Inc., dated April 2, 2018, which was recorded as Instrument Number 180009951 in the Clerk’s Office of the Circuit Court for the City of Newport News, Virginia,

on August 1, 2018;

and

WHEREAS, the Property is adjacent to and divided by a sixty foot (60') right-of-way owned by the City known as 28th Street (“28th Street Right-of-Way”); and

WHEREAS, the Property is the site of new multifamily developments to be known as Carrier Point I and Carrier Point II; and

WHEREAS, Carrier Point I and Carrier Point II will be equipped with security and fire prevention systems that are designed to work in sync with each other and will be more efficient if connected via fiber communication wire; and

WHEREAS, to facilitate the above interconnectivity between Carrier Point I and Carrier Point II, NNRHA has requested an encroachment to allow the installation of two (2) one inch (1") PVC conduits containing fiber communication wire under the 28th Street Right-of-Way, as shown on the drawing attached to the proposed Encroachment Agreement between the City of Newport News, Virginia and the Newport News Redevelopment and Housing Authority, a copy of which is attached hereto as Exhibit A (the “Encroachment Agreement”); and

WHEREAS, this encroachment can be facilitated without causing undue public danger or inconvenience, and will have no adverse effect on the maintenance of the right-of-way, given the terms incorporated in the proposed Encroachment Agreement; and

WHEREAS, NNRHA has requested that the City Council authorize the encroachment and the execution of the Encroachment Agreement; and

WHEREAS, the City Manager recommends that the Council authorize the encroachment recommended by NNRHA and authorize the execution of the Encroachment Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News, Virginia:

1. That it desires to, and hereby does, authorize a non-permanent, revocable encroachment under and within the 28th Street Right-of-Way as described herein.
2. That the non-permanent, revocable encroachment is authorized subject to compliance with the terms of that certain Encroachment Agreement between the City of Newport News, Virginia and the Newport News Redevelopment and Housing Authority, a copy of which is attached hereto and made a part hereof.
3. That it hereby authorizes and directs the City Manager to execute and the City Clerk

to attest, on behalf of the City of Newport News, Virginia, that certain Encroachment Agreement between the City of Newport News, Virginia and the Newport News Redevelopment and Housing Authority.

4. That a copy of this ordinance and the executed Encroachment Agreement be recorded in the real estate records of the Clerk's Office of the Circuit Court of the City of Newport News, Virginia.

5. That this ordinance shall be in effect on and after the date of its adoption, September 8, 2020.

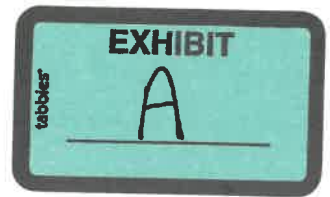
PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON SEPTEMBER 8, 2020

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk



**PREPARED BY AND
RETURN TO:
Office of the City Attorney
2400 Washington Ave, 9th Floor
Newport News, VA 23607
(757) 926-8416 phone
(757) 926-8549 fax**

Consideration: \$0

**Tax ID No. 306.0303-09 & 306.0302-05
2714 & 2812 Jefferson Avenue, Newport News, VA 23607**

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (the "Agreement") is made and entered as of this 8th day of September, 2020, by and between the **CITY OF NEWPORT NEWS, VIRGINIA**, a municipal corporation in the Commonwealth of Virginia whose mailing address is 2400 Washington Avenue, Newport News, Virginia 23607 (hereinafter referred to as "GRANTOR" or "City"), in favor of the **NEWPORT NEWS REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia, whose mailing address is 227 – 27th Street, Newport News, Virginia 23607 (hereinafter referred to as "GRANTEE" or "NNRHA").

WITNESSETH:

WHEREAS, GRANTEE is the owner of two parcels of real property known as 2714 Jefferson Avenue ("Lot 31A") and 2812 Jefferson Avenue ("Lot 29A"), respectively, in the City of Newport News, Virginia, more fully described as:

Lot 31A - 2714 Jefferson Avenue (Tax ID: 306.03-03-09)

All those certain lots, pieces or parcels of land situate, lying and being in the City of Newport News, Virginia, known, numbered and designated as Lot 31A, as shown on that certain plat entitled "Property Line Vacation Plat, Property of the Newport News Redevelopment and Housing

Authority Lots 31 Thru 44 - Block 121, Map of Part of the City of Newport News (P.B. 1- PG. 3)” prepared by Alfonso & Associates, Inc., dated April 2, 2018, which was recorded as Instrument Number 180009950 in the Clerk’s Office of the Circuit Court for the City of Newport News, Virginia, on August 1, 2018;

Lot 29A - 2812 Jefferson Avenue (Tax ID: 306.03-02-05)

All those certain lots, pieces or parcels of land situate, lying and being in the City of Newport News, Virginia, known, numbered and designated as Lot 29A, as shown on that certain plat entitled “Property Line Vacation Plat, Property of the Newport News Redevelopment and Housing Authority Lots 29 Thru 44-A - Block 139, Map of Part of the City of Newport News (P.B. 1- PG. 3)” prepared by Alfonso & Associates, Inc., dated April 2, 2018, which was recorded as Instrument Number 180009951 in the Clerk’s Office of the Circuit Court for the City of Newport News, Virginia, on August 1, 2018;

and

WHEREAS, Lot 29A and Lot 31A are separated by and adjacent to a sixty (60’) foot right-of-way owned by the City known as 28th Street (“28th Street Right-of-Way”); and

WHEREAS, in order to connect the proposed security and fire prevention systems for the Carrier Point I and Carrier Point II multifamily housing developments, to be built on Lot 29A and Lot 31A, Grantee wishes to install two (2) one inch (1”) underground PVC conduits containing fiber communication wire under the 28th Street Right-of-Way, as shown on the attached Exhibit 1 (“the Encroachment”); and

WHEREAS, City has determined that there is no objection to the Encroachment; and

WHEREAS, the City Council of the City of Newport News, by ordinance adopted at its meeting on September 8, 2020, approved the Encroachment described herein under and within the aforesaid 28th Street Right-of-Way.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor and Grantee, Grantor and Grantee do hereby agree as follows:

1. **Acknowledgement and Agreement Regarding Encroachment.**

Grantor, insofar as its rights and interests are concerned, does hereby consent to the Encroachment, pursuant to Va. Code §15.2-2009 and §15.2-2011, and hereby grants permission to the Grantee to install and maintain the conduit and fiber communication wires within the 28th Street Right-of-Way, subject to the following terms and conditions.

2. **Use.** Permission for the Encroachment is granted provided the construction, use, and maintenance thereof do not interfere with the safe and efficient construction, operation, maintenance or use of Grantor's right-of-way, sidewalk, or any of the facilities therein ("Grantor's Facilities"), and further provided that such activities are in compliance with all applicable laws, ordinances, regulations, and codes. Grantee agrees it will not construct or cause to be constructed or erected any other structure or improvement within the 28th Street Right-of-Way.

3. **Defective Condition.** If the Encroachment is determined by the Grantor to be in such a defective condition as to cause damage to or to otherwise adversely affect Grantor's Facilities, the safety and health of pedestrians, or the general safety and health of the public, Grantee shall cause the condition to be corrected, remedied or removed at no expense to Grantor within thirty (30) days after written notification by Grantor. Grantee agrees to reimburse Grantor all costs incurred by Grantor in repairing any damage to Grantor's Facilities arising out of the use of the Encroachment within thirty (30) days of receiving an invoice from Grantor for such costs.

4. **Indemnity.** The Grantee hereby agrees to defend, indemnify and save harmless the Grantor and its agents, officials, and employees from any and all claims, demands, damages, including death, and liability of every kind and nature whatsoever for, on account of, or arising out of the use of the Encroachment under the consent hereby granted, except to the extent caused by the gross negligence or willful misconduct of Grantor.

5. **Insurance.** The Grantee will maintain general liability coverage in the amount of at least One Million Dollars (\$1,000,000) per occurrence, endorsed to name the Grantor as an additional insured thereon, and obtain an endorsement requiring the insurer to provide the City with at least thirty (30) days advance notice of cancellation (10 days' notice for cancellation due to non-payment of premium), and shall continue to provide the Grantor with updated certificates of insurance upon each renewal of the coverage. Failure to provide or maintain the required insurance coverage shall result in termination of this Encroachment Agreement.

6. **Termination.** This Agreement shall in no way be construed as the granting of a perpetual easement or any type of property right by Grantor. The Agreement is revocable at will by either party upon one hundred eighty (180) days' notice.

7. **Reservation.** Grantor reserves all rights of access to its 28th Street Right-of-Way for construction, operation, and maintenance of its facilities without incurring any liability for damage to or loss of use of the Encroachment described herein or for inverse condemnation thereof. Grantor expressly reserves all rights, privileges, and immunities granted to it under the laws and statutes of the United States and the Commonwealth of Virginia and under the Code of Ordinances of the City of Newport News as to any claims made against it.

8. **Governing Law.** This Agreement shall be governed and construed under the laws of the State of Virginia, without regard to its conflicts laws or choice of law rules.

9. **Successor and assigns.** The terms of this Agreement are binding upon and shall inure to the benefit and obligation of the heirs, personal representatives, successors and assigns of the parties and their respective successors in title, but shall not otherwise grant any rights to any entity not a party to this Agreement nor create any rights in any third-party beneficiary of this Agreement.

10. **Exhibits.** The Exhibit attached to this Agreement is incorporated herein by reference and made a part hereof.

[SIGNATURE PAGES FOLLOW]

WITNESS the following signatures and seals

GRANTOR

CITY OF NEWPORT NEWS, VIRGINIA

By: _____
Name: Cynthia D. Rohlf
Title: City Manager

ATTEST:

APPROVED AS TO FORM:

Mabel Washington Jenkins,
City Clerk

Collins L. Owens, Jr.
City Attorney

COMMONWEALTH OF VIRGINIA
City of Newport News, to wit:

I, _____, a Notary Public in and for the City and Commonwealth aforesaid, whose commission expires on the _____ day of _____, _____, do hereby certify that the CITY OF NEWPORT NEWS, VIRGINIA, by Cynthia D. Rohlf, as City Manager, and attested by Mabel Washington Jenkins, as City Clerk, whose names are signed to the foregoing writing, have acknowledged the same before me in my City and Commonwealth aforesaid.

GIVEN under my hand this _____ day of _____, 2020.

NOTARY PUBLIC

Registration No. _____

My Commission Expires: _____

GRANTEE

NEWPORT NEWS REDEVELOPMENT
AND HOUSING AUTHORITY

By: _____

Name:

Title:

APPROVED AS TO FORM:

Raymond H. Suttle, Jr.
Counsel for NNRHA

COMMONWEALTH OF VIRGINIA
City of Newport News, to wit:

I, _____, a Notary Public in and for the City and
Commonwealth aforesaid, whose commission expires on the ____ day of
_____, _____, do hereby certify that the NEWPORT NEWS
REDEVELOPMENT AND HOUSING AUTHORITY, by _____, as
_____, whose name is signed to the foregoing writing, has acknowledged the
same before me in my City and Commonwealth aforesaid.

GIVEN under my hand this ____ day of _____, 2020.

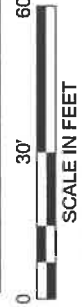
NOTARY PUBLIC

Registration No. _____

My Commission Expires: _____

EXHIBIT 1

EXHIBIT - 1
CARRIER POINT 1
FIBER CONDUIT
ENCROACHMENT REQUEST



SCALE IN FEET
 CARRIER POINT 1
 34 RESIDENTIAL UNITS
 MIXED USE - 4 STORY MASONRY BUILDING
 FOOTPRINT = 11,837 S.F.
 FEE = 16.00

