CITY COUNCIL
ATLANTA, GEORGIA

01-O-1827

AN ORDINANCE

BY; CITY UTILITIES COMMITTEE

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE GEORGIA TECH FOUNDATION REAL ESTATE HOLDING CORPORATION FOR THE CONSTRUCTION AND OPERATION OF PRIVATE UTILITY FACILITIES CROSSING UNDER SPRING STREET; AND TO WAIVE THE REQUIREMENT FOR BONDING AND RENTAL PAYMENTS; AND FOR OTHER PURPOSES.

WHEREAS, the Georgia Tech Foundation Real Estate Holding Corporation (GTFREHC) has agreed to construct a multi-building research facility for use by the Georgia Institute of Technology (Ga. Tech) in an area bounded by the Downtown Connector, West Peachtree Street, 4th Street, and 5th Street; thereby extending and connecting the Tech Campus to Midtown; and

WHEREAS, Spring Street bisects the proposed research facility; and the provision of state of the art computer and communication connections, as well as fire protection, emergency power generation, and other essential utility connections, necessitate the construction of said utility facilities under the Public Right-of-Way of Spring Street; and

WHEREAS, the Director of the Bureau of Buildings and the Commissioner of the Department of Public Works have reviewed the agreement and the plans for the proposed facilities, and have determined that said plans and agreement meet the technical requirements set forth in Section 138-24 (b) of the City of Atlanta Code of Ordinances with the exception or paragraphs (b) 4 and (b) 8 (performance bond), and paragraph (b) 9 (rental payments) which are to be wavied;

THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA AS FOLLOWS:

Section 1. That the mayor is hereby authorized to enter into an Encroachment Agreement, as outlined in Section 138, Article II of the City of Atlanta Code of Ordinances, with GTFREHC (the substance of which is set forth on Exhibit "A") for the construction, installation, operation, use, and maintenance of private utilities, conduits, and facilities crossing under Spring Street between 4th Street and 5th Street.

Section 2. That the GTFREHC shall indemnify the City and hold the City harmless from any and all claims arising from the construction, installation, operation, use, maintenance, and removal of said utilities, conduits, and facilities.

OMC – Amendment Incorporated by tcp 12/13/01

Section 3. That the GRFREHC agrees to pay to the CITY a one-time license fee of $5,000 as per City of Atlanta Code of Ordinances Section 138-129(b)(5).

Section 4. That this agreement shall not become binding upon the City and the City shall incur no liability upon the same until said agreement has been executed by the Mayor and delivered to the contracting parties.

Section 5. That any resolution or part of any resolution that may be in conflict, is hereby waived with regard to, and to the extent of the conflict for this location only.

A true copy

Deputy Clerk

ADOPTED as amended by the Council DEC 03, 2001
APPROVED by the Mayor DEC 11, 2001

RIGHT-OF-WAY ENCROACHMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the _____day of _____, 2001 by and between the CITY OF ATLANTA, a municipal corporation, chartered pursuant to the law of the State of Georgia, (the CITY) and the Georgia Tech Foundation Real Estate Holding Corporation, a non-profit corporation, incorporated in the State of Georgia, (GTFREHC).

WITNESSETH THAT:

WHEREAS, the Georgia Tech Foundation Real Estate Holding Corporation (GTFREHC) has agreed to construct a multi-building research facility for use by the Georgia Institute of Technology (Ga. Tech) in an area bounded by the Downtown Connector, West Peachtree Street, 4th Street, and 5th Street; thereby extending and connecting the Tech Campus to Midtown; and

WHEREAS, Spring Street, a public right-of-way under the jurisdiction of the City of Atlanta, bisects the proposed research facility; and the provision of state of the art computer and communication connections, as well as fire protection, emergency power generation, and other essential utility connections, necessitate the construction of said utility facilities under the Public Right-of-Way of Spring Street; and

WHEREAS, the City of Atlanta Code of Ordinances (Section 138, Article II) requires a Right-of-Way Encroachment Agreement for the construction and operation of private utilities and facilities within the public right-of-way; and

WHEREAS, the Council of the City of Atlanta has Authorized the Mayor, by Resolution, to enter into an agreement for the same;

NOW, THEREFORE, for and in consideration of the mutual agreements of the parties hereinafter set forth and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties hereby covenant and agree as follows:

(1) In the opinion of the Commissioner of Public Works the construction, installation, operation, use, and maintenance of private utilities, conduits, and facilities crossing under Spring Street between 4th Street and 5th Street, as shown on attached engineering drawings will constitute a benefit to the public and, except for permitted temporary disruptions of service, will not adversely impact the ability of the Right-Of-Way to handle vehicular or pedestrian traffic or otherwise to perform their intended function.

(2) This agreement is and shall be a condition of a permit for the construction, installation, operation, use, and maintenance of private utilities, conduits, and

facilities crossing under Spring Street between 4th Street and 5th Street, and that this agreement shall be binding upon GTFREHC, the owners of the property abutting the Right-of-Way, and their successors in title in perpetuity or until the agreement is ended by mutual consent of the CITY and the agreeing parties.

(3) All alterations, excavations or encroachments permitted on, in, over, under or within the Public Right-of-Way of Spring Street shall be pursuant to a plan, calculations, and technical specifications prepared by a professional engineer licensed to practice in the State of Georgia, which plans, calculations and technical specifications have been approved by the Commissioner of Public Works pursuant to the standards set forth in or promulgated pursuant to Chapter 138 of the City of Atlanta Code of Ordinance and, when applicable, the standards of State Department of Transportation or the Federal Highway Administration or both.

(4) The City of Atlanta requirements for a performance bond are hereby waived.

(5) GTFREHC agrees to acquire or provide appropriate insurance to indemnify and hold harmless the CITY, its agents, officers and employees from all claims arising out of any injury to Persons or damage to property resulting from the changes to or work on, in, over, under or within the Right-of-Way by GTFREHC, or any contractor employed by GTFREHC, or any of the agents or employees of GTFREHC, it's contractors, and affiliates.

(6) GTFREHC's obligation to hold the City harmless against all claims arising out of the construction, operation, use, maintenance or removal of the encroachment or excavation shall not be waived or reduced because of the Commissioner of Public Works having approved by the plans and specifications for the encroachment or excavation or by the requiring or not requiring modifications thereto, even though the City may be found to have been negligent as a matter of law because of its acts or failure to act in regard thereto.

(7) All parties to this agreement are signatories hereto, as evidenced by a title certificate of an attorney licensed to practice law within this state, which title certificate sets forth the names and addresses of the owners of the property or structures to be connected by said utility facilities and the names and addresses of the lessors and lessees of the property or structures, together with sufficient information as to the terms of any leases of the property or structures and the corporate names of any parties.

(8) Parties acknowledge and agree that the granting of permission to construct an encroachment or excavation on, in, over, under or within any public street or public alley within the City is contingent upon the agreement of the owner and the lessor of the tracts of land adjacent to the street or alley affected by the encroachment or excavation to remove the encroachment or excavation and to

replace any area beneath the street or alley where the encroachment or excavation is constructed to a condition satisfactory to the City within ninety (90) days after being notified to do so by the Commissioner of Public Works without cost to the City and to provide security, if requested to do so by the City, to ensure that the encroachment or excavation will be removed or backfilled and the area returned to a condition satisfactory to the Commissioner of Public Works without the cost to the City.

(9) The GTFRHC agree to pay the CITY a one-time license fee of $5,000 as per City of Atlanta Code of Ordinance Section 138-129(b)(5).

(10) This agreement is not exclusive and does not negate any past, present, or future agreement that the CITY may make with any other utility owner or provider for use of the public right-of-way. GTFREHC agrees to determine at its own expense, the location of all above ground and below ground public utilities and private utilities in the area where the encroachment or excavation is to be constructed, and agrees if necessary to make arrangements for the removal or relocation of those utilities as appropriate, at no expense to the CITY.

(11) GTFREHC agrees to conduct all activities within the right-of-way in accordance with applicable local, state, and federal rules, regulations, and standards. GTFREHC agrees to maintain said private utilities and facilities in good condition, and to repair any and all damage to any City facilities, and any public or private utilities, and to reimburse the City for any consequential damage that may result from the construction and operation of said private utilities and facilities within the public right-of-way. In the event that CITY determines that the condition of said private utilities and facilities present an imminent danger to life or property, the City may undertake all reasonable measures to protect life or property of the public at large, and the expense of such measures will be borne by GTFREHC.

(12) GTFREHC agrees to remove all private utilities and facilities from the Public Right-of-way without cost to the CITY if the Commissioner of Public Works determines that such removal is required for the safe and efficient use of the right-of-way by the public.

(13) Parties agree that all notices, demand, and request required hereunder shall be in writing and shall be sent to the CITY of to GTFREHC by United States Mail, registered or certified, return receipt requested, , addressed as follows:

TO THE CITY: Commissioner
City of Atlanta Department of Public Works
68 Mitchell Street, S. W.
Atlanta, GA. 30335

TO GTFREHC: John B. Carter, Jr.

Georgia Tech Foundation
177 North Avenue
Atlanta, GA. 30332

Either party may change its address for receipt of notices by giving the other party a notice of such change which meets the requirements of this provision.

(14) This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and no representations or agreements, oral or otherwise, which are not embodied herein, shall be of any force or effect.

(15) This Agreement is intended as a covenant running with the land and shall be binding upon and shall inure to the benefit of the successors, the successors in title, and the assigns of the parties to this Agreement.

(16) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have caused their hands and seals to be affixed hereto on the day and year first above written.

Signed, sealed and delivered this _____ day of _____, 2001, in the presence of:

_____	_____
Witness	Notary Public

GEORGIA TECH FOUNDATION REAL ESTATE HOLDING CORPORATION	THE CITY OF ATLANTA, a Georgia Municipal Corporation
_____	By: _____
Officer	Mayor
_____	Attested: _____
Officer	Municipal Clerk

COUNCIL PRESIDENT PROTEM MICHAEL BOND PRESIDEI

RCS# 3311
12/03/01
4:01 PM

Atlanta City Council

Regular Session

CONSENT

Pages 1 through 9

YEAS:	14
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	2
EXCUSED:	0
ABSENT	0

SEE ATTACHED LISTING OF ITEMS ADOPTED/ADVERSED ON CONSENT AGENDA

Y McCarty	NV Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	Y Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

ITEM (S) REMOVED FROM CONSENT AGENDA
01-O-1464
01-O-1997

CONSENT

ITEMS ADOPTED ON CONSENT AGENDA

1. 01-O-1452
2. 01-O-1827
3. 01-O-1645
4. 01-O-1867
5. 01-O-2009
6. 01-O-2010
7. 01-O-1857
8. 01-O-1928
9. 01-O-1929
10. 01-O-1979
11. 01-O-1983
12. 01-O-1992
13. 01-O-1996
14. 01-O-1998
15. 01-O-1999
16. 01-O-2000
17. 01-O-1985
18. 01-O-1986
19. 01-O-2011
20. 01-O-2020
21. 01-O-1801
22. 01-O-1938
23. 01-O-1939
24. 01-O-2017
25. 01-O-1175

ITEMS ADOPTED ON CONSENT AGENDA

26. 01-R-1873
27. 01-R-1957
28. 01-R-1989
29. 01-R-2005
30. 01-R-2006
31. 01-R-2032
32. 01-R-2033
33. 01-R-1954
34. 01-R-1956
35. 01-R-1990
36. 01-R-1943
37. 01-R-1974
38. 01-R-1975
39. 01-R-2030
40. 01-R-2031

01-O-1027 (Do Not Write Above This Line)

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE GEORGIA TECH FOUNDATION REAL ESTATE HOLDING CORPORATION FOR THE CONSTRUCTION AND OPERATION OF PRIVATE UTILITY FACILITIES CROSSING UNDER SPRING STREET; AND TO WAIVE THE REQUIREMENT FOR BONDING AND RENTAL PAYMENTS; AND FOR OTHER PURPOSES.

ADOPTED BY

DEC 03 2001

COUNCIL

As Amended

- ☑ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☐ PERSONAL PAPER REFER

Date Referred 11/19/01

Referred To: City Utilities

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee City Utilities

Date

Chair Clair Muller

Referred to CUC

Committee	Committee
City Utilities	
Date 11-27-01	Date
Chair Clair Muller	Chair
Action: Fav, Adv, Held (see rev. side)	Action: Fav, Adv, Held (see rev. side)
Other: As Amended	Other:
Members	Members
Refer To	Refer To

Committee	Committee
Date	Date
Chair	Chair
Action: Fav, Adv, Held (see rev. side)	Action: Fav, Adv, Held (see rev. side)
Other:	Other:
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

☑ 2nd ☐ 1st & 2nd Readings ☐ 3rd

☑ Consent ☐ V Vote ☑ RC Vote

CERTIFIED

CERTIFIED DEC 03 2001 COUNCIL PRESIDENT PROTEM

CERTIFIED DEC 03 2001 MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED DEC 11 2001 MAYOR