04- R -1374

A RESOLUTION BY:
COUNCILMEMBER DEBI STARNES

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER AN ENCROACHMENT AGREEMENT FOR NON-CONFORMING USES WITH GEORGIA STATE UNIVERSITY, A UNIT OF THE UNIVERSITY SYSTEM OF GEORGIA, FOR THE INSTALLATION OF CAMPUS IDENTIFICATION EMBELLISHMENT SIGNS AND CROSSWALKS SURROUNDING THE GEORGIA STATE UNIVERSITY CAMPUS IN THE CITY OF ATLANTA; AND FOR OTHER PURPOSES

WHEREAS, Georgia State University, as part of its Campus Improvement Project, desires to make improvements to the Georgia State University campus, consisting of the installation of campus identification signs, crosswalks, and related identification amenities (the "Project"); and

WHEREAS, Georgia State University desires to construct and install on the University campus, as part of the Project, certain elements that will encroach into the City of Atlanta Rights-of-Way, consisting of existing and newly constructed utility poles supporting attached identification embellishments, and/or re-striping of certain intersection crosswalks (collectively, the "Encroachments") surrounding the Georgia State University campus, said locations being more fully described and shown on Exhibit A attached hereto and incorporated herein by reference (the "Encroachment Area(s)"); and

WHEREAS, Georgia State University desires to obtain from the City of Atlanta an agreement for the construction, installation, maintenance, repair and replacement of the Encroachments into, and the presence and existence of the Encroachments in, the Encroachment Areas; and

WHEREAS, Georgia State University is requesting this permanent construction and maintenance agreement to accomplish the tasks identified above; and

WHEREAS, the City of Atlanta's Code of Ordinances, Section 138, Article II, requires a Right-of-Way Encroachment Agreement for non-conforming uses for the construction and operation of private structures or properties that encroach into and within the public right-of-way for which there is not an applicable agreement; and

WHEREAS, The Commissioner of the Department of Public Works has reviewed the plans for the Right-of-Way Encroachments and has determined that the work will not adversely impact the ability of the affected Rights-of-Way to handle vehicular or pedestrian traffic or otherwise to perform its intended public function.

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

Section 1. The Mayor is authorized to enter into an Encroachment Agreement for Nonconforming Uses, as outlined Section 138, Article II, of the City's Code of Ordinances, with Georgia State University, for the installation of the Encroachments, in a form and pursuant to conditions determined by the Commissioner of the City's Department of Public Works and the City Attorney, to be desirable, appropriate and in the best interests of the City of Atlanta for this transaction.

Section 2. That the City Attorney is directed to prepare an Encroachment Agreement for Non-Conforming Uses in accordance with Section 138, Article II, of the City's Code of Ordinances.

Section 3. That the Encroachment Agreement for Non-Conforming Uses will not become binding upon the City and City will incur no liability under it until the Mayor has executed it, attested to by the Municipal Clerk and delivered to Georgia State University.

After Recording Return To:

_____
_____
_____
_____

ENCROACHMENT AGREEMENT FOR NON-CONFORMING USES

This AGREEMENT ("Agreement") is entered into as of the _____ day of _____, 2004, between CITY OF ATLANTA, a municipal corporation, chartered pursuant to the laws of the State of Georgia ("CITY"), and Georgia State University, a unit of the University System of Georgia, ("ENCROACHING PARTY").

BACKGROUND:

Whereas, ENCROACHING PARTY, as part of its Campus Improvement Project, desires to make improvements to the Georgia State University campus, consisting of the installation of campus identification signs, crosswalks, and related identification amenities (the "Project"); and

Whereas, ENCROACHING PARTY, desires to construct and install on the University campus, as part of the Project, certain elements that will encroach into the CITY Rights-of-Way consisting of existing and newly constructed utility poles supporting attached identification embellishments, and/or re-striping of certain intersection crosswalks (collectively, the "Encroachments") surrounding the Georgia State University campus, said locations being more fully described and shown on Exhibit A attached hereto and incorporated herein by reference (the "Encroachment Area(s)"); and

Whereas, ENCROACHING PARTY desires to obtain from CITY an agreement for the construction, installation, maintenance, repair and replacement of the Encroachments into, and the presence and existence of the Encroachments in, the Encroachment Areas; and

Whereas, ENCROACHING PARTY is requesting this permanent construction and maintenance agreement to accomplish the tasks identified above; and

Whereas, CITY's Code of Ordinances, Section 138, Article II, requires a Right-of-Way Encroachment Agreement for non-conforming uses for the construction and operation of private structures or properties that encroach into and within the public right-of-way for which there is not an applicable agreement; and

Whereas, the Council of CITY has authorized the Mayor, by Resolution, to enter into an Encroachment Agreement for Non-Conforming Uses with ENCROACHING PARTY, allowing it to install and construct certain structures or properties that encroach into and within the public right-of-way;

Accordingly, CITY and ENCROACHING PARTY agree as follows:

1. **Public Benefit of Encroachments.** In the opinion of the Commissioner of CITY's Department of Public Works, the construction, installation, operation, use and maintenance of the Encroachments (the Encroachments may also be referred to as the "Work") extending into

the Encroachment Area, as shown on the attached Exhibit A, will constitute a benefit to the public.

2. **Grant Of Rights In Encroachment Area.** CITY grants to ENCROACHING PARTY the right to construct, install, operate, use, repair and maintain the Work within the Encroachment Areas, as shown on the attached Exhibit A. The Commissioner of Public Works has reviewed the plans and has determined that the Work will not adversely impact the ability of the affected Rights-of-Way to handle vehicular or pedestrian traffic or otherwise to perform its intended public function. Accordingly, ENCROACHING PARTY shall not construct, install, operate, use, repair and maintain any Work within the Encroachment Areas not listed on the attached Exhibit A.

3. **Agreement Is Condition Precedent To Permitting Process.** In addition to ENCROACHING PARTY satisfying all other applicable legal, administrative or other requirements, the execution of this Agreement by ENCROACHING PARTY is a condition precedent to CITY considering issuing a permit for constructing, installing, operating, using, repairing and maintaining the Work within the Encroachment Area, and that this Agreement will bind ENCROACHING PARTY, the owners of the property abutting the affected Rights-of-Way, and their successors in title in perpetuity or until the Agreement is terminated or otherwise expires.

4. **Plans, Calculations and Technical Specifications.** All alterations, excavations or encroachments permitted on, in, over, under or within the Encroachment Area(s) must be pursuant to plans, calculations, and technical specifications prepared by a professional engineer licensed to practice in the State of Georgia, and approved by the Commissioner of CITY's Department of Public Works, pursuant to the standards set forth in or promulgated under Chapter 138 of CITY's Code of Ordinances and, when applicable, all other appropriate legal requirements or administrative rules, including, but not limited to, the standards of Georgia Department of Transportation or the Federal Highway Administration, or any other governmental agency having jurisdiction over the Right-of-Way or Encroachment Area(s).

5. **Public Liability Insurance.** ENCROACHING PARTY, an entity of the State of Georgia, is prohibited by law from indemnifying any party. Accordingly, ENCROACHING PARTY agrees that it will require any contractors who perform the work contemplated herein to indemnify and hold CITY harmless from all claims arising out of the use of the Encroachment Area(s) and the construction, maintenance, or removal of the Work in the Encroachment Area(s), and to maintain a policy of public liability insurance, at no expense to CITY, satisfactory to CITY and naming CITY as an additional named insured, in an amount approved by CITY's Risk Manager.

6. **Removal From And Restoration Of Encroachment Area and Right-of-Way.** ENCROACHING PARTY agrees to remove all Encroachments and other structures constructed or installed by it or on its behalf within the Encroachment Area(s), and to replace any area beneath and including the Rights-of-Way where the Encroachments and other structures were constructed or installed by it or on its behalf, to a condition satisfactory to CITY within thirty (30) days after being notified to do so by the Commissioner of CITY's Department of Public Works, without cost to CITY, and to provide security, including a payment bond and/or performance bond, if requested at that time to do so by the City, to ensure that the facilities constructed and installed in the Encroachment Area are removed and backfilled and the Encroachment Area(s) and Rights-of-Way returned to a condition

satisfactory to the Commissioner of CITY's Department of Public Works, without cost to CITY.

7. **Removal Of Utilities And Facilities From Encroachment Area; Public Safety And Efficiency Considerations.** ENCROACHING PARTY agrees to remove all Work from the Encroachment Area(s) without cost to CITY if the Commissioner of CITY's Department of Public Works determines that removal is required for the safe and efficient use of the Rights-of-Way by the public. CITY may therefore, upon written request to ENCROACHING PARTY, require removal of any portion of Work existing in the public Rights-of-Way when the removal is necessary to maintain the health, safety, or welfare of the public or to improve or maintain the public Rights-of-Way for transportation uses.

8. **Removal Of Utilities And Facilities From Encroachment Area; Structural or Property Deterioration.** ENCROACHING PARTY agrees to remove all Work from the Encroachment Area(s) without cost to CITY if the Commissioner of CITY's Department of Public Work determines that removal is required when the Work ceases to have continuous use, has a change in the type or degree of use, or if the structural or functional soundness of the Work deteriorates due to lack of maintenance, damage by fire, flood, wind, or other act of God. CITY shall have the right and duty to require the removal of any Work thus affected.

9. **Compliance With CITY's Code Of Ordinances.** ENCROACHING PARTY agrees at all times during the term of this Agreement to comply with all of the terms of CITY's Code of Ordinances applicable to this Agreement, including, but not limited to Chapter 138, provided that such ordinance is not in conflict with the State constitutional or legislative provisions governing the ENCROACHING PARTY

10. **Compliance With Applicable Law; Reparation Of Facilities And Utilities.** ENCROACHING PARTY agrees to conduct all activities within the Encroachment Area(s) and Rights-of-Way in accordance with all applicable local, state, and federal rules, regulations, and standards. ENCROACHING PARTY agrees to maintain the private utilities and facilities installed and constructed in the Encroachment Area(s) in good condition, and will require its contractors to repair any damage to any City facilities caused by the contractor, and any public or private utilities, If CITY determines that the condition of the Work installed and constructed by ENCROACHING PARTY in the Encroachment Area(s) present an imminent danger to life or property of the public, CITY may undertake all reasonable measures to protect life or property of the public, and the expense of those measures will be borne by ENCROACHING PARTY.

11. **Reimbursement Of Damages To CITY.** ENCROACHING PARTY agrees to require its contractors to repair any damage to the Rights-of-Way or Encroachment Area(s) resulting from the contractors' use of the Encroachment Area(s) or the construction, installation, maintenance, repair or use of the utility facilities in the Encroachment Area(s) and will require contractors to reimburse CITY for any damages to the Rights-of-Way or Encroachment Area(s) resulting from the contractors' use of the Encroachment Area(s) or the construction, installation, maintenance, repair or use of the Work in the Encroachment Area(s).

12. **Application Fee and Annual Rental.** CITY grants to ENCROACHING PARTY the right to schedule construction and installation of the Work within the Encroachment Areas in separate phases, subject to the limits of Paragraph 2 of this Agreement. ENCROACHING PARTY agrees to pay to CITY, in advance of construction and or installation of each phase

of any Work within the Encroachment Areas, a one-time application fee of $100.00 per individual Encroachment. In addition, ENCROACHING PARTY agrees to pay to CITY an annual rental fee of $25.00 per individual Encroachment installed. The payment of the application fee is condition precedent to the entry of this Agreement.

13. **Semi-Annual Inspection.** ENCROACHING PARTY agrees to provide a- semi-annual inspection of all WORK constructed and installed in the Encroachment Area(s) to ensure that the same is in a safe and suitable condition for public use and travel, and to provide to CITY a written report within 30 days of inspection.

14. **Non-Exclusivity Of Agreement.** This Agreement is not exclusive and does not negate any past, present, or future agreement that CITY may enter into with any other utility owner or provider for use of the Rights-of-Way.

15. **Notices.**

15.1. **Addresses:** CITY and ENCROACHING PARTY agree that all notices, demands, and requests required under this Agreement must be in writing and sent to CITY or to ENCROACHING PARTY addressed as follows:

TO THE CITY:	Commissioner City of Atlanta, Department of Public Works 55 Trinity Avenue, S.W. Atlanta, Georgia 30303
TO ENCROACHING PARTY:	Georgia State University Vice President for Finance & Administration P.O. 3999 Atlanta, Ga. 30302-3999

15.2. **Delivery.** All notices given by either party to the other under this Agreement must be in writing and may be delivered by:

15.2.1. regular mail, first class, postage prepaid;
15.2.2. certified or registered mail;
15.2.3. facsimile, with a hard copy sent within 24 hours of transmission by one of the other permitted delivery means; or
15.2.4. hand-delivery, to the parties at the addresses and facsimile numbers specified in the Clause titled "Addresses".

15.3 **Receipt.** Notices sent by mail will be deemed received three (3) days after deposit in the mail, properly addressed. Notices sent by certified or registered mail will be deemed to be received upon the date of the acknowledgment. Notices sent by facsimile will be deemed to be received upon successful transmission to the proper facsimile number; if the sender can produce a facsimile transmission confirmation report. Notices delivered by hand-delivery will be deemed to be received upon written acceptance by the respective party.

15.4 **Change of Address or Facsimile Number.** Either party may, at any time, change its respective address or facsimile number by sending written notice to the other party

of the change.

16. **Default and Termination of Agreement.** If ENCROACHING PARTY defaults in its performance of this Agreement, and fails to cure the default within thirty (30) days of CITY's written notice to ENCROACHING PARTY of the default [or if such default is not capable of being cured within thirty (30) days], ENCROACHING PARTY has not commenced curing the default and diligently pursued such cure to completion within a reasonable amount of time), this Agreement may be terminated by CITY upon 5 days prior written notice to ENCROACHING PARTY. Upon termination of this Agreement by CITY, ENCROACHING PARTY must remove all utility facilities and other structures constructed or installed by it or on its behalf within the Encroachment Area(s) and replace any area beneath, and including, the Right-of-Way where the facilities and other structures were constructed or installed by it or on its behalf within the Encroachment Area in accordance with this Agreement.

17. **Parties Bound.** This Agreement will be binding upon and inure to the benefit of CITY and ENCROACHING PARTY and their respective permitted successors, successors in title and assigns.

18. **Governing Law.** This Agreement will be construed under Georgia law. ENCROACHING PARTY and CITY fix jurisdiction and venue for any action brought with respect to this Agreement in Fulton County, Georgia.

19. **Entire Agreement**. This Agreement contains the entire agreement of the parties with respect to its subject matter and no representations or agreements, oral or otherwise, which are not set forth in the Agreement, will be of any force or effect.

EXHIBIT "A"

Locations:
Georgia State University Traffic Calming Exterior Signs

Overhang Horizontal Welcome Sign

1- Edgewood Avenue
    1- north side of Edgewood, just west of 158 Edgewood Bldg.

4- Courtland Street
    1- east side of Courtland, just north of Edgewood Ave.
    1- west side of Courtland, just north of Edgewood Ave.
    1- east side of Courtland next to Alumni Hall
    1- west side of Courtland next to Hurt Park

2- Piedmont Avenue
    1- west side of Piedmont next to the Aquatics Bldg.
    1- east side of Piedmont next to the future Science Bldg. (old Atlanta Police property)

2- Decatur/Marietta Street
    1- south side of Decatur across from the Natural Science Center
    1- north side of Decatur next to the Recreation Center

Vertical Symbol Sign with Blue Banner

1- Marietta Street
    1- south side of Marietta across from the Commerce Bldg.

2- Forsyth Street
    1- east side of Forsyth next to the Rialto Theater
    1- west side of Forsyth next to the Aderhold Learning Center

Small Round Symbol Sign

5- Edgewood Ave.
    3- south side of Edgewood next to Hurt Park, midblock between Peachtree Center Avenue and Courtland Street
    2- south side of Edgewood next to the Lofts, midblock between Courtland Street and Piedmont Avenue

14- Courtland Street

3- east side of Courtland next to Alumni Hall
2- east side of Courtland next to the Student Center
1-east side of Courtland next to the University Center
1- east side of Courtland between the University Center and the Counseling Center
1- east side of Courtland next to the Counseling Center
2- west side of Courtland next to Hurt Park
1- west side of Courtland next to Sparks Hall
1- west side of Courtland next to Library North
1- west side of Courtland next to Library South
1- west side of Courtland next to "G" Parking Deck

10- Piedmont Avenue

1- west side of Piedmont next to the Lofts Parking Deck
2- west side of Piedmont next to "M" Parking Deck
1- west side of Piedmont next to the Student Center
1- west side of Piedmont next to Urban Life
1- southwest side of Piedmont at the intersection of Piedmont and Decatur
1- west side of Piedmont next to the Aquatics Center
2- east side of Piedmont next to the Recreation Center
1- northeast side of Piedmont at the intersection of Piedmont and Decatur

2- Butler Street

1- west side of Butler next to "S" Parking Deck
1- west side of Butler next to "K" Parking Deck

8- Peachtree Center Avenue/Central Avenue

1- east side of Peachtree Center Ave. next to Arts and Humanities
1- east side of Peachtree Center Ave. next to Kell Hall
1- east side of Peachtree Center Ave. next to General Classroom Bldg.
1- northeast side of Peachtree Center Ave. at the intersection of Peachtree Center and Decatur
1- east side of Central Ave. next to Classroom South
1- east side of Central Ave. next to "G" Deck
1- west side of Peachtree Center Ave. next to Science Annex
1- west side of Central Ave. across the street from Classroom South

1- Pryor Street

1- east side of Pryor St. next to the College of Education

16- Decatur/Marietta Street

1- north side of Marietta next to the Commerce Building
1- north side of Marietta next to the Robinson College of Business
1- north side of Decatur next to One Park Place
1- north side of Decatur next to the Natural Science Center

1- north side of Decatur next to the General Classroom Building
1- north side of Decatur next to Library North
1- north side of Decatur next to University Center
1- north side of Decatur next to Urban Life
1- south side of Decatur next to College of Education
2- south side of Decatur next to the Natural Science Center
1- south side of Decatur next to Classroom South
1- south side of Decatur next to Library South
1- south side of Decatur next to the Sports Arena
1- south side of Decatur next to the Aquatics Bldg.
1- south side of Decatur next to the future Science Bldg. (old Atlanta Police property)

1- Broad Street
1- west side of Broad next to the Aderhold Learning Center

3- Luckie Street
2- south side of Luckie next to the Aderhold Learning Center
1- south side of Luckie next to the Rialto Theater
1- south side of Luckie next to the Standard Bldg.

2- Forsyth Street
2- east side of Forsyth next to the Aderhold Learning Center

2- Poplar Street
1- north side of Poplar next to the Haas Howell Bldg.
1- north side of Poplar next to the Aderhold Learning Center

1- Fairlie Street
1- east side of Fairlie Street next to the Standard Bldg.

CITY:

_____
MAYOR

ATTEST:

_____
MUNICIPAL CLERK (Seal)

WITNESS:

_____
NAME:_____

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES:_____
[SEAL]

APPROVED:

_____
COMMISSIONER, DEPARTMENT OF PUBLIC WORKS

RECOMMENDED:

_____
DIRECTOR, DEPARTMENT OF PROCUREMENT

ENCROACHING PARTY:

_____

BY:_____
NAME:_____
TITLE:_____

ATTEST:

_____
NOTARY PUBLIC
MY COMMISSION EXPIRES:_____
[SEAL]

WITNESS:

_____
NAME:_____

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES:_____
[SEAL]

APPROVED AS TO FORM:

_____
CITY ATTORNEY