

ROUTE _____ PROJECT _____

DEPARTMENT OF TRANSPORTATION

THREE PARTY RIGHT OF WAY
ENCROACHMENT AGREEMENT ON
PRIMARY AND SECONDARY SYSTEM

-AND-

-AND-

THIS AGREEMENT, made and entered into this the ___ day of _____, 19___,
by and between the Department of Transportation, party of the first part; and _____
_____ party of the
second part; and _____
party of the third part,

W I T N E S S E T H:

THAT WHEREAS, the party of the second part desires to encroach on the right of
way of the public road designated as Route _____, located _____
_____ with the construction and/or erection of _____

WHEREAS, it is to the material advantage of the party of the second part to effect
this encroachment, and the party of the first part, in the exercise of authority con-
ferred upon it by statute, is willing to permit the encroachment within the limits of
the right of way as indicated, subject to the conditions of this agreement;

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to
the party of the second part the right and privilege to make this encroachment as
shown on attached plan sheet (s), specifications, and special provisions which are
made a part hereof upon the following conditions, to wit:

That the installation, operation, and maintenance of the above described facility will be accomplished in ac-
cordance with the party of the first part's latest POLICIES AND PROCEDURES FOR ACCOMODATING UTILITIES ON HIGHWAY
RIGHTS-OF-WAY, and such revisions and amendments thereto as may be in effect at the date of this agreement. In-
formation as to these policies and procedures may be obtained from the Division Engineer or State Utility Agent of
the party of the first part.

That the said party of the second part binds and obligates himself to install and maintain the encroaching
facility in such safe and proper condition that it will not interfere with or endanger travel upon said highway, nor
obstruct nor interfere with the proper maintenance thereof, to reimburse the party of the first part for the cost
incurred for any repairs or maintenance to its roadways and structures necessary due to the installation and ex-
istence of the facilities of the party of the second part, and if at any time the party of the first part shall
require the removal of or changes in the location of the said facilities, that the said party of the second part
binds himself, his successors and assigns, to promptly remove or alter the said facilities, in order to conform
to the said requirement, without any cost to the party of the first part.

That the party of the second part agrees to provide during construction and any subsequent maintenance proper
signs, signal lights, flagmen and other warning devices for the protection of traffic in conformance with the latest
Manual on Uniform Traffic Control Devices for Streets and Highways and Amendments or Supplements thereto. Infor-
mation as to the above rules and regulations may be obtained from the Division Engineer of the party of the first
part.

That the party of the second part hereby agrees to indemnify and save harmless the party of the first part
from all damages and claims for damage that may arise by reason of the installation and maintenance of this en-
croachment.

That the party of the second part agrees to restore all areas disturbed during installation and maintenance
to the satisfaction of the Division Engineer of the party of the first part. The party of the second part agrees
to exercise every reasonable precaution during construction and maintenance to prevent eroding of soil; silting or
pollution of rivers, streams, lakes, reservoirs, other water impoundments, ground surfaces or other property; or
pollution of the air. There shall be compliance with applicable rules and regulations of the North Carolina
Division of Environmental Management, North Carolina Sedimentation Control Commission, and with ordinances and
regulations of various counties, municipalities and other official agencies relating to pollution prevention and
control. When any installation or maintenance operation disturbs the ground surface and the existing ground cover,
the party of the second part agrees to remove and replace the sod or otherwise reestablish the grass cover to meet
the satisfaction of the Division Engineer of the party of the first part.

That the party of the second part agrees to assume the actual cost of any inspection of the work considered to
be necessary by the Division Engineer of the party of the first part.

That the party of the second part agrees to have available at the construction site, at all times during con-
struction, a copy of this agreement showing evidence of approval by the party of the first part. The party of the
first part reserves the right to stop all work unless evidence of approval can be shown.

Provided the work contained in this agreement is being performed on a completed highway open to traffic; the
party of the second part agrees to give written notice to the Division Engineer of the party of the first part
when all work contained herein has been completed. Unless specifically requested by the party of the first part,
written notice of completion of work on highway projects under construction will not be required.

That in the case of noncompliance with the terms of this agreement by the party of the second part, the party of the first part reserves the right to stop all work until the facility has been brought into compliance or removed from the right of way at no cost to the party of the first part.

That it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun within one (1) year from the date of authorization by the party of the first part unless written waiver is secured by the party of the second part from the party of the first part.

During the performance of this contract, the second party, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

- a. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the U. S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- d. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to,
 - (1) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (2) cancellation, termination or suspension of the contract, in whole or in part.
- f. Incorporation of Provisions: The contractor shall include the provisions of paragraphs "a" through "f" in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Department of Transportation to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

That when title to the subject that constitutes the aforesaid encroachment passes from the party of the second part and vests in the party of the third part, the party of the third part agrees to assume all responsibilities and rights and to perform all obligations as agreed to herein by the party of the second part.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed in the day and year first above written.

DEPARTMENT OF TRANSPORTATION

BY: _____
DIVISION ENGINEER

WITNESS:

Second Party

WITNESS:

Third Party