

ROUTE _____ PROJECT _____ COUNTY OF _____

DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY ENCROACHMENT AGREEMENT FOR THE PIPING OF TREATED EFFLUENT ON PRIMARY AND SECONDARY HIGHWAYS

-AND-

THIS AGREEMENT, made and entered into this the _____ day of _____, 20_____, by and between the Department of Transportation (DOT), party of the first part; and _____ party of the second part,

WITNESSETH

THAT WHEREAS, the party of the second part desires to encroach on the right of way of the public road designated as Route(s) _____, located _____

with the following:

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 conferred 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, and the Memorandum of Agreement (MOA) between DOT and the Department of Environmental Quality (DEQ) dated January 25, 1999, and the laws and regulations of this State and the instructions contained herein;

NOW, THEREFORE, IT IS AGREED that the party of the first part hereby grants to the party of the second part, after approval by DEQ pursuant to the MOA, 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 accordance with the party of the first part's latest UTILITIES ACCOMMODATIONS MANUAL, and such revisions and amendments thereto as may be in effect at the date of this agreement. Information as to these policies and procedures may be obtained from the Division Engineer or State Utilities Manager of the party of the first part.

That the said party of the second part binds and obligates himself to install 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, drainages and structures necessary due to the installation and existence 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 itself, its successors and assigns, to promptly remove, to alter, or close down the said facilities, in order to conform to the said requirement and laws of this State, without any cost to the party of the first part..

That the party of the second part agrees to provide during construction of the encroachment and any subsequent maintenance and/or repairs 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. Information 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 encroachment. This will include any and all third party claims for damages and claims from adjoining land owners, businesses, etc. that may be affected by said encroachment activities.

The encroaching party is responsible for posting a bond, the amount to be set by DOT and DEQ, which will be used to cover any expenses, lawsuits, judgments, etc. related to the encroaching activity.

It is clearly understood by the party of the second part that the party of the first part will assume no responsibility for any damage that may be caused to such facilities, within the highway rights of way limits, and any areas outside those limits that are affected by said encroachment activities in carrying out its construction and maintenance operations. DOT may allow piped water across its fee-owned or dedicated right-of-way and not be in violation of any and all applicable environmental laws and DEQ regulations and NPDES permit conditions. Piping across DOT right of way that DOT does not own in fee or dedicated will require written approval of all adjoining land owners to be obtained by the encroaching party.

That the party of the second part agrees to restore all areas disturbed during construction 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. The party of the second part shall comply at all times and be responsible for such compliance with applicable rules and regulations of DEQ, and with ordinances and regulations of various counties, municipalities and other official agencies relating to pollution control and prevention that may be affected in any way by this encroachment activity. When any installation or maintenance operation disturbs the ground surface and 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 DOT Division Engineer.

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 DOT Division Engineer or DEQ representative pursuant to the MOA. The party of the second part agrees to abide by any and all NPDES permits, DEQ rules or regulations and any and all other applicable laws.

That the party of the second part agrees to have available at the encroaching site, at all times during construction, a copy of this agreement showing evidence of approval by the parties. DOT and DEQ reserve the right to stop all work unless evidence of approval can be shown. Other documents may be required to remain on-site as well as may be required by a representative of DEQ.

That the party of the second part agrees to give written notice to both DOT Division Engineer and DEQ representative when all work contained herein has been completed.

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 DOT. This can be done by any party, including a request by DEQ pursuant to their regulatory authority and the MOA at any time, for any reason.

The party of the second part hereby covenants that any action pursuant to the allowed encroachment will not violate any law or environmental rules or standards applicable during the term of the encroachment. Any such violations will be the sole responsibility of the party of the second part. DEQ will not cite, file, or hold DOT in violation of any state laws or regulations if caused by the action/discharge by the party of the second part. Also, the party of the second part is wholly liable for any proximately caused damages (i.e., off site ground water contamination, surface water contamination, erosion or siltation problems, etc.) that may occur due to the encroaching activity, regardless if DOT is negligent for any reason in partly causing any said damages. DOT is entitled to any reimbursement or payment of any costs incurred due to any problem or occurrence initially caused by the encroaching party, to be paid out of the posted bond monies.

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.

DOT has the specific right to end this agreement at any time for any reason. This agreement may be modified, with the consent of the parties, in writing.

R/W (161C): Party of the Second Part certifies that this agreement is true and accurate copy of the form R/W (161C) incorporating all revisions to date.

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

RECOMMENDED BY:

DIVISION ENGINEER

DEPARTMENT OF TRANSPORTATION

BY: _____
STATE UTILITIES MANAGER

ATTEST OR WITNESS: _____

Second Party

INSTRUCTIONS

When the applicant is a corporation or a municipality, this agreement must have the corporate seal and be attested by the corporation secretary or by the empowered city official, unless a waiver of corporate seal and attestation by the secretary or by the empowered City official is on file in the Raleigh office of the State Utilities Manager. In the space provided in this agreement for execution, the name of the corporation or municipality shall be typed above the name, and title of all persons signing the agreement should be typed directly below their signature.

When the applicant is not a corporation, then his signature must be witnessed by one person. The address should be included in this agreement and the names of all persons signing the agreement should be typed directly below their signature.

This agreement must be accompanied, in the form of an attachment, by plans or drawings showing the following applicable information:

1. All roadways and ramps.
2. Right of way lines and where applicable, the control of access lines.
3. Location of the proposed encroachment. Locations should be shown on the appropriate [USGS topographic map](#) including location of the discharge. If this discharge involves piping across lands outside of DOT right of way, or to existing sewer systems, such written grant of authority must be attached.
4. Length and type of encroachment.
5. Location by highway survey station number. If station number cannot be obtained, location should be shown by distance from some identifiable point, such as a bridge, road, intersection, etc. (To assist in preparation of the encroachment plan, the Department's roadway plans may be seen at the various Highway Division Offices, or at the Raleigh office.)
6. Drainage structures or bridges if affected by encroachment.
7. Typical section indicating the pavement design and width, and the slopes, widths and details for either a curb and gutter or a shoulder and ditch section, whichever is applicable.
8. Amount of material to be removed and/or replaced on DOT right of way, if applicable.
9. Cross-sections of all grading operations, indicating slope ratio and reference by station where applicable.
10. All pertinent drainage structures proposed. Include all hydraulic data, pipe sizes, structure details and other related information.
11. Erosion and sediment control.
12. Any special provisions or specifications as to the performance of the work or the method of construction that may be required by the Department must be shown on a separate sheet attached to encroachment agreement provided that such information cannot be shown on plans or drawings.
13. The Department's Division Engineer must be given notice by the applicant prior to actual starting of installation included in this agreement.
14. Method of handling traffic during construction where applicable.
15. Scale of plans, north arrow, etc.
16. Copies of all applicable permits issued for the installation, operation and maintenance of the encroaching facility and any other permits or authorizations as may be necessary.
17. Seal and signature of the North Carolina Registered Professional Engineer in direct charge of the design, installation, operation, and maintenance of the encroaching facility.
18. Posting for an appropriate bond to ensure payment by party of the second part for any compensable violations it may incur pursuant to its encroaching activities. Such bond must be submitted in a form acceptable to DOT, prior to the grant of any encroachment.
19. The discharge from the encroachment must be shown. Where applicable, the encroaching party must first obtain the necessary permits for such discharge and make copies available to the Division Engineer.
20. All plans and the encroachment must adhere to the dictates of the MOA between DOT and DEQ dated January 25, 1999, that provides for such encroachments on DOT right of way.
21. The encroaching party must obtain a copy of the agreement and instructions from the DOT Division Engineer. The encroaching party supplies all necessary information and returns such to DOT. DOT will review and if approved, forward such to the responsible DEQ official for their review. Upon DEQ review and approval, an addendum will be signed by DEQ and the encroaching party and be sent to DOT for signature, along with the encroachment agreement. If DOT then approves the encroachment agreement, it will sign such, and the addendum, and send copies to the encroaching party. The encroaching party will send a copy of these documents to DEQ.
22. If DOT does not own the right of way needed for the encroachment in fee, the encroaching party must provide DOT signatures of all underlying landowners and/or adjoining property owners approving of the encroachment on their property before DOT can consider the encroachment request.