

COUNTY OR COUNTIES OF

STATE OF NORTH CAROLINA

DEPARTMENT OF TRANSPORTATION

BLANKET ENCROACHMENT AGREEMENT

-AND-

PLOWED-IN TELECOMMUNICATIONS CABLE ON
PRIMARY AND SECONDARY ROAD SYSTEM

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

WITNESSETH:

THAT WHEREAS, the party of the second part desires to install underground cables, and other facilities and equipment on the right of way of certain public roads on the State Primary and/or Secondary Road System in the above County or Counties, North Carolina; and

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 with in 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 encroach and construct facilities in the County or counties mentioned above, subject to strict compliance to the following 22 numbered special provisions;

1. This agreement applies only to telephone cable installed by the "plowing in" method and does not cover cable installed by open trenching except laterals or branch cables, loops to terminals, load coils or splice points, and occasional trenching where necessary to pass over, under or around obstructions encountered.
2. This agreement applies to roads on the Primary and Secondary System of State roads which are not classified as Freeways.
3. This agreement does not apply to Freeways including Freeway interchange ramps.
4. Any work to be done under this agreement must be reported to the party of the first part's Division Engineer in writing with attached map or sketch showing location and extent of work, and a letter of concurrence be received from the Division Engineer before commencing the work.
5. 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 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 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.
6. 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 right of way limits, in carrying out its construction and maintenance operations.
7. Cable should not be installed closer than 3 feet from the edge of pavement, except in unusual situations approved by the party of the first part's Division Engineer. Shoulders stabilized with bituminous material and/or compacted crushed stone will be considered as pavement. Plowing in will be prohibited in unstable shoulders caused by adverse weather conditions or other reasons.
8. The cable shall be placed a minimum depth of 18 inches (24 inches preferable) below the surface of the shoulder except in passing over obstructions. Service taps and laterals should be placed a minimum of 24 inches below the bottom of side ditches.
9. Cable is to be placed as far as practical from the centerline of unpaved roads.
10. Plowing in will be scheduled for other than winter months as far as practical.
11. The pavement of intersecting roads shall not be cut except in unusual situations approved by the part of the first part's Division Engineer.
12. The cutting of pavement for service taps across the road will not be permitted, and the cutting of pavement for additional terminals where existing cables have been paved over shall be done only upon approval of the party of the first part's Division Engineer. Crossings by the methods of driving, jacking or boring holes up to 6 inches in diameter are acceptable subject to the approval of the party of the first part's Division Engineer.
13. In situations where an unpaved road is paved over an existing cable or where an existing pavement is widened over a cable, permission will not be granted to cut the pavement for the purpose of restoring or repairing the cable except in cases of emergency involving services. In these cases, the party of the first part's Division Engineer may authorize the cutting of pavement for emergency restoration of service.
14. In installing cable, highway drainage pipes and culverts are not to be disturbed.
15. No attachments may be made to bridges or culverts without the prior written approval of the State Utilities Manager.
16. Equipment used in plowing in cable shall be of such types as not to cause damage to pavement.

17. The party of the second part shall 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. Information as to the above rules and regulations may be obtained from the Division Engineer of the party of the first part.
18. 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 pollutions 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.
19. 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.
20. All work is to be completed promptly with a minimum of delay.
21. The party of the second part agrees to have available at the construction site, at all times during construction, a copy of the letter of authorization and sketches from the Division Engineer (see Item #4 above) 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 approval can be shown.
22. 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.

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 contracts 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.

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

DEPARTMENT OF TRANSPORTATION

BY: _____
STATE UTILITIES MANAGER

ATTEST OR WITNESS

(COMPANY)

(TYPE NAME AND TITLE)