

ROUTE \_\_\_\_\_

COUNTY OF \_\_\_\_\_

DEPARTMENT OF TRANSPORTATION  
AND

RIGHT OF WAY ENCROACHMENT AGREEMENT FOR  
GRADING OR ALTERATION OF DRAINAGE ON INTERSTATE  
OR OTHER CONTROLLED ACCESS HIGHWAYS

THIS AGREEMENT, made and entered into this the \_\_\_\_\_ 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 encroach on the right of way of the public road designated as Route(s) \_\_\_\_\_, 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 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;

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 the attached plan sheet(s), specifications and special provisions which are attached hereto and made a part hereof upon the following conditions, to wit:

That any work as set out herein performed under this agreement shall be accomplished without access from or to the through-traffic roadways and interchange ramps of the interstate or other controlled access highway facility.

That all grading shall be done as shown on the attached plan sheet(s), specifications and special provisions with slope intersections being well rounded and berm ditches, if any, adjusted to be entirely within the right of way. Staking for the grading and the finished grading shall be approved by the Division Engineer and the State Roadside Environmental Engineer.

That the traveled lanes, shoulders and interchange ramps of the interstate or other controlled access highway facility shall not be used for any construction operations.

That grass cover shall be established by the party of the second part over the entire disturbed area of the right of way be seeding, mulching, and jute mesh, if necessary, in accordance with the standard erosion control procedures of the party of the first part.

During the performance of this concept, 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.

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. Information as to the above may be obtained from the District Engineer of the party of the first part. The party of the first part reserves the right to stop any work for noncompliance.

The party of the first part does not guarantee that the highway right of way will be kept free from tree growth. Eventually trees may be planted or developed from volunteer growth and the party of the first part reserves the right to establish a complete screen on the right of way if the adjacent property is allowed to become unsightly as viewed from the highway.

That the party of the second part shall make no alteration of drainage which shall affect the lands of adjoining property owners other than the party of the second part, except upon written authorization from such adjoining property owners and such written authorization shall be attached to this agreement prior to the execution thereof by the party of the first part.

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 construction and maintenance of this encroachment.

A final inspection of the work will be made by the Division Engineer and other employees of the party of the first part and designated representative of the Federal Highway Administration and the party of the second part agrees to promptly correct any deficiencies in the work as may be required by the Division Engineer. The party of the second part further agrees to assume the actual costs 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 shall furnish to the party of the first part a performance bond in the sum of \$ \_\_\_\_\_ Dollars to be attached hereto, the conditions of said bond to be that if the party of the second part, its heirs, successors and assigns shall, properly comply with, carry out, and perform all of the conditions, terms and obligations of this agreement, the said bond to be null and void, otherwise to remain in full force and effect, for a period of not less than one year from the date of completion of the work as set out herein.

That the said party of the second part binds and obligates himself to accomplish the encroachment herein described 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, and if at any time the party of the first part shall require the changes in said encroachment; that the said party of the second part binds himself, his heirs, successors, and assigns, to promptly alter the said encroachment in order to conform to the said requirement, without any cost to the party of the first part.

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)

R/W (167): Party of the Second Part certifies that this agreement is true and accurate copy of the form R/W (167) incorporating all revisions to date.