

RESOLUTION OF THE PUBLIC WORKS COMMISSION OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA, AUTHORIZING THE PUBLIC WORKS COMMISSION GENERAL MANAGER TO EXECUTE STANDARD ENCROACHMENT AGREEMENTS WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

WHEREAS, from time to time, it is necessary for the Public Works Commission of the City of Fayetteville, North Carolina ("PWC") to enter into "Right of Way Encroachment Agreements" ("Agreements") with the North Carolina Department of Transportation ("DOT") which permits PWC to extend its utilities in, over, under and across DOT public road rights of way thereby encroaching upon said rights of way; and

WHEREAS, to obtain permission for PWC to make such encroachments, a standard DOT Right of Way Agreement by and between PWC and DOT is used for that purpose, a copy of which is attached hereto as Exhibit "A" and which is incorporated herein by reference; and

WHEREAS, the Commissioners of PWC have examined that standard Agreement and understand the terms and conditions contained therein which they do not find detrimental to PWC; and

WHEREAS, the construction of PWC utility extensions will be expedited and facilitated if the General Manager of PWC were given the authority to execute these standard Agreements on behalf of PWC.

NOW, THEREFORE, BE IT RESOLVED BY THE PUBLIC WORKS COMMISSION OF THE CITY OF FAYETTEVILLE THAT:

1. The General Manager of PWC, acting as the duly authorized representative of PWC, is hereby authorized to execute on its behalf the standard DOT Right of Way Agreement as attached hereto as Exhibit "A" without the necessity of further approval by PWC when such Encroachment Agreements are necessary by and between PWC and DOT; and.

2. The General Manager shall report the execution of such Agreements to PWC at its next regularly scheduled meeting following such execution.

Considered and adopted the 22 day of MARCH, 2000.

PUBLIC WORKS COMMISSION OF
THE CITY OF FAYETTEVILLE, NC



Robert W. Saunders, Chairman

ATTEST:



Milton R. Wofford, Secretary

COUNTY OF

DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY ENCROACHMENT AGREEMENT

PRIMARY AND SECONDARY HIGHWAYS

-AND-

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

WITNESSETH

Route(s) _____, located _____

THAT WHEREAS, the party of the second part desires to encroach on the right of way of the public road designated as _____,

of:
with the construction and/or erection

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 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 POLICIES AND PROCEDURES FOR ACCOMMODATING UTILITIES ON HIGHWAY RIGHTS-OF-WAY, 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 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 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.

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. Information as to the above rules and regulations may be obtained from the Division Engineer of the party of the first part.

- 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.

R/W (161) : Party of the Second Part certifies that this agreement is true and accurate copy of the form
R/W (161) 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.

DEPARTMENT OF TRANSPORTATION

BY:

DIVISION ENGINEER

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 Manager of Right of Way. 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.