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STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

P.O. Box 25201, Raleigh, NC 27611-5201
PHONE (919) 733-2520

EUGENE A. CONTI, JR.
SECRETARY

JUN 09 2009

David B Owens, President
Mountain Places Land Development
P.O. Box 70
Mountain City, TN 37683

SUBJECT: Encroachment Agreement
NC194, Ashe County

Dear Mr. Owens:

Attached for your files is a copy of a Right of Way Encroachment Agreement that has been properly executed. This Agreement covers the following:

Installation of a concrete bridge abutment for access to property over Little Helton Creek. This access will be located 300-feet north of Bridge No. 46. All work shall be performed according to the attached plans.

APPROVED SUBJECT TO: Attached Special Provisions.

Please contact the North Wilkesboro District Engineer's office (336/903-9146) if any further assistance is needed in this matter.

Sincerely,

M. A. Pettyjohn, PE
Division Engineer

MAP/SVG/sg

Attachment

cc: Robert Memory, State Utility Agent
D. J. Tetzlaff
County Maintenance Engineer

ROUTE NC 194 PROJECT N/A COUNTY OF Ashe

DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY ENCROACHMENT AGREEMENT
FOR NON-UTILITY ENCROACHMENTS ON
PRIMARY AND SECONDARY HIGHWAYS

-AND-

Mountain Places Land DevelopmentPO Box 70Mountain City, TN 37683THIS AGREEMENT, made and entered into this the 9 day of JUNE, 20 09, by and between the Department of Transportation, party of the first part;David B. Owens

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) NC 194, located 300 feet north of Bridge NO.46

with the construction and/or erection of:

concrete Bridge abutment for access to property
over Little Helton Creek.

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 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.

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.

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, in carrying out its construction and maintenance operations.

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 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 encroaching site, at all times during construction, 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.

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

ATTEST OR WITNESS:

S.V. Gentry
S.V. Gentry

David B. Owens
David B. Owens, President
Mountain Places Land Development
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.

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.
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. Horizontal alignment indicating general curve data, where applicable.
9. Vertical alignment indicated by percent grade, P.I. station and vertical curve length, where applicable.
10. Amount of material to be removed and/or placed on NCDOT right of way, if applicable.
11. Cross-sections of all grading operations, indicating slope ratio and reference by station where applicable.
12. All pertinent drainage structures proposed. Include all hydraulic data, pipe sizes, structure details and other related information.
13. Erosion and sediment control.
14. 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.
15. The Department's Division Engineer should be given notice by the applicant prior to actual starting of installation included in this agreement.
16. Method of handling traffic during construction where applicable.
17. Scale of plans, north arrow, etc.

SPECIAL PROVISIONS

16.1A

Mountain Places Land Development
NC194 Ashe County

1. NCDOT WORK ZONE TRAFFIC CONTROL QUALIFICATIONS AND TRAINING PROGRAM

The North Carolina Department of Transportation is in the process of developing a Work Zone Traffic Control Qualification & Training program that will begin its implementation in 2009. This program will require qualified and trained Work Zone Flaggers in every flagging operation (July 2009), qualified and trained Work Zone Traffic Control Installers on every traffic control installation (January 2010) and qualified and trained Work Zone Traffic Control Supervisors on Significant Projects (July 2010). It is intended for the program to include anyone working within NCDOT Right of Way including work associated with NCDOT construction and encroachment agreements as well as all NCDOT operations.

Training for this certification will be provided by NCDOT approved training sources and/or private entities that have been pre-approved to train themselves. Additional information will be provided as this program progresses. If you have any questions, contact our web site at www.ncdot.org/~wztc, or contact Meredith McDiarmid, P.E. with NCDOT Work Zone Traffic Control Unit at (919) 250-9159 or mmcdiarmid@dot.state.nc.us

2. That the party of the second part agrees to provide traffic control devices, lane closures, road closures, positive protection and/or any other warning or positive protection devices necessary for the safety of road users during construction and any subsequent maintenance. This shall be performed in conformance with the latest NCDOT Roadway Standard Drawing and Standard Specifications for Roads and Structures and Amendments or Supplements thereto. When there is no guidance provided in the Roadway Standard Drawings or Specifications, comply with the Manual on Uniform Traffic Control Devices for Streets and Highways and Amendment or Supplement thereto. Information as to the above rules and regulations may be obtained from the Division Engineer of the party of the first part.
3. The encroaching party shall notify the District Engineer's office at telephone number (336) 903-9143 prior to beginning construction and after construction is complete.

4. An executed copy of this encroachment agreement shall be present at the construction site at all times during construction. If safety or traffic conditions warrant such an action, NCDOT reserves the right to further limit, restrict or suspend operations within the Right of Way.
5. NCDOT does not guarantee the Right of Way on this road, nor will it be responsible for any claim for damages brought about by any property owner by reason of this installation.
6. The encroaching party is required to contact the appropriate Utility Companies involved and make satisfactory arrangements to adjust the utilities in conflict with the proposed work prior to beginning construction.
7. Excavation within 500 feet of a signalized intersection will require notification by the party of the second part to the Division Traffic Engineer at telephone number (336) 667-9111. All traffic signal or detection cables must be located prior to excavation.
8. The encroaching party shall comply with all applicable Federal, State, and local environmental regulations and shall obtain all necessary Federal, State and local environmental permits, including but not limited to, those related to sediment control, stormwater, wetland, streams, endangered species and historical sites.
9. The contractor shall not begin the construction until after the traffic control and erosion control devices have been installed to the satisfaction of the District Engineer.
10. Trenches, bore pits and/or other excavations shall not be left open or unsafe overnight. The Contractor shall comply with all OSHA requirements and provide a competent person on site to supervise excavation at all times.
11. Vegetative cover shall be established on all disturbed areas in accordance with the recommendations of the Division Roadside Environmental Engineer.
12. Proper temporary and permanent measures shall be used to control erosion and sedimentation in accordance with all Local, State, and Federal regulations.
13. All materials and workmanship shall conform to the N.C. Department of Transportation's Standards and Specifications Manuals.
14. Strict compliance with the Policies and Procedures for Accommodating Utilities on Highway Rights of Way manual shall be required.

15. Any drainage structure disturbed or damaged shall be restored to its original condition as directed by the District Engineer.
16. Any disturbed guardrail shall be reset according to the applicable standard (SKT 350 End Treatments) or as directed by the District Engineer. County Maintenance Engineer D. W. Eller (336-246-5287) is to be notified when excess guardrail may be picked up.
17. Right of Way monuments disturbed during construction shall be referenced by a registered Land Surveyor and reset after construction.
18. Any work requiring equipment or personnel within 5' of the edge of any travel lane of an undivided facility and within 10' of the edge of any travel lane of a divided facility shall require a lane closure with appropriate tapers.
19. Work shall not be performed on both sides of the road simultaneously within the same area.
20. No access, parking or material storage shall be allowed along any state-maintained roadway.
21. During non-working hours, equipment shall be parked as close to the Right of Way line as possible and be properly barricaded in order not to have any equipment obstruction within the Clear Recovery Area.
22. All roadway signs that are removed due to construction shall be reinstalled as soon as possible.
23. Excavation material shall not be placed on the pavement. Drainage structures shall not be blocked with excavation materials.

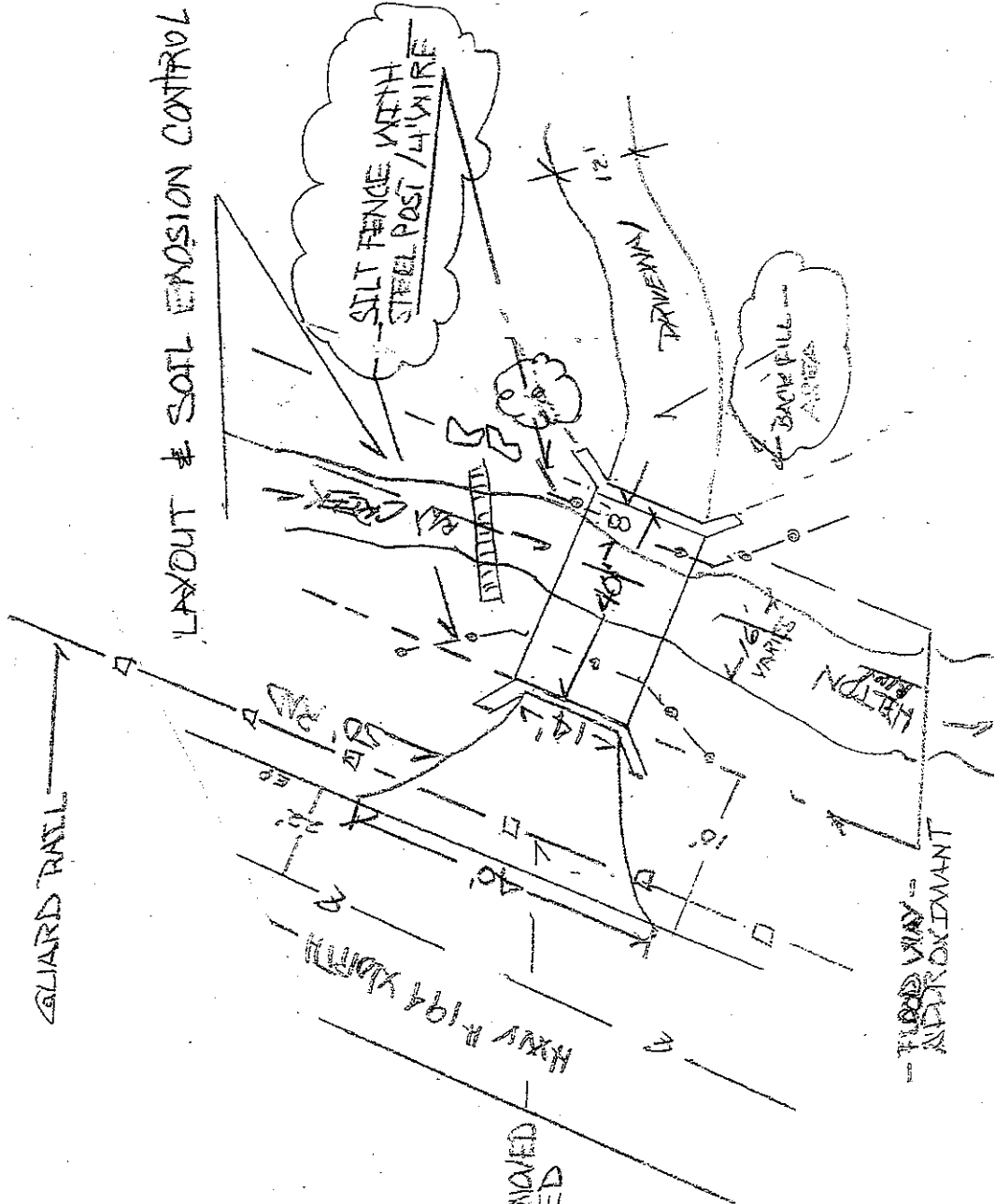
RICHARD # NANCY HANNOLD HWY #194
ASHE COUNTY, NC

NOTES

- 1) SOIL EROSION SHALL BE INSTALLED PRIOR TO CONSTRUCTION
- 2) NO EQUIPMENT OR MATERIALS PLACED IN WATER WAY
- 3) TRAFFIC CONTROL SHALL BE AS DIRECTED BY NCDOT



NOT TO SCALE



- GUARD RAIL TO BE REMOVED AND END BUTTS INSTALLED

NOTE: CHECK WITH NCDOT FOR LOCATION OF CREEK AND TRAIL