



PAT McCRORY
Governor

NICHOLAS J. TENNYSON
Secretary

September 8, 2016

NPP-Briar Chapel, LLC
Laurie M. Ford
1342 Briar Chapel Parkway
Chapel Hill, NC 27516

SUBJECT: ENCROACHMENT AGREEMENT (19.4368)
Curb and Gutter, Sidewalk
SR 1529
Chatham County

Dear Ms. Ford:

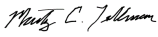
Attached is a properly executed copy of a Right of Way Encroachment Agreement which covers the following:

Installation of curb & gutter and sidewalk on SR 1529 in Chatham County, and any associated pre-construction work.

This agreement is approved subject to the Special Provisions and plans which are attached to and made a part of the Encroachment Agreement. Any work associated with the subject project permitted under an NCDOT approved Driveway Permit shall be completed in accordance with this Encroachment Agreement.

Sincerely,

Brandon H. Jones, P.E.
Division Engineer

DocuSigned by:

E72EF75317784CB...

By: Marty C. Tillman
District Engineer

Attachments

cc: Robert Memory, State Utility Agent, Utility Coordination Unit (cover letter only)
Marty C. Tillman, District Engineer (with original)
Justin Bullock, P.E., Chatham County Maintenance Engineer's Office
Lee Bowman, Newland Communities
Garretson Browne, Newland Communities
Justin Brown, P.E., Philip Post & Associates
File

(19.4368)



ENCROACHMENT SPECIAL PROVISIONS

NNP-Briar Chapel
19.4368 (Chatham County)

Approval of the encroachment agreement is made subject to the following Special Provisions:

1. Changes noted in red on the plans shall be incorporated into and made a part of the encroachment agreement. An executed copy of the encroachment agreement shall be available at the construction site at all times. NCDOT reserves the right to stop all work unless evidence of approval can be shown.
2. **Notify the following prior to beginning work:**
 - **Marty C. Tillman, District Engineer**
300 DOT Drive
Asheboro, NC 27204
(336) 318-4000
3. 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.
4. All materials and construction shall be in accordance with NCDOT standards and specifications, including but not limited to the latest versions of the **NCDOT Standard Specifications for Roads and Structures**, the **NCDOT Roadway Standards Drawings**, and **NCDOT Policies and Procedures for Accommodating Utilities on Highway Rights of Way**.
5. It shall be the responsibility of the Encroacher to determine the location of other utilities within the encroachment area in accordance with General Statute 87-102. The Encroacher shall be responsible for notifying other utility owners and providing protection and safeguards to prevent damage or interruption to existing facilities and to maintain accessibility to existing utilities. Costs to repair, restore, or relocate existing utilities due to this encroachment shall be the responsibility of the encroaching party.
6. NCDOT does not guarantee the Right of Way on this road, nor will it be responsible for any claim for damages brought by any property owner by reason of this encroachment. All Right of Way and easements necessary for construction and maintenance shall be dedicated to NCDOT with the proof of dedication furnished to the District Engineer prior to beginning work. Encroachment within the Right of Way does not imply approval for encroachment onto adjacent property. The Encroacher shall be responsible for securing any easement, permit, permission, or approval for encroachment or other use of property outside the state maintained right of way. Right of Way monuments disturbed during construction shall be referenced by a Professional Land Surveyor and reset immediately after construction.
7. The encroaching Party shall take whatever measures are necessary to minimize soil erosion and siltation, water pollution, and air pollution. It shall be the responsibility of the Encroaching Party to keep fully informed to comply with the applicable regulations of all legally constituted authorities relating to pollution prevention and control. In the event of conflict between regulations, specifications, or requirements, the more restrictive requirement shall apply. All erosion and pollution control devices and measures shall be constructed, installed, maintained and removed by the encroaching party in accordance with all applicable Federal, State and Local laws, regulations, ordinances, and policies. No construction shall begin until all erosion control devices have been installed to the satisfaction of the District Engineer. Failure to comply with this provision shall be grounds for immediate suspension of all activities within the Right of Way.
8. **NCDOT WORK ZONE TRAFFIC CONTROL QUALIFICATIONS AND TRAINING PROGRAM:** Effective July 1, 2010, all flagging operations within NCDOT Right of Way require qualified and trained Work Zone Flaggers. Qualified and trained Work Zone Traffic Control Supervisors will be required on Significant Projects.
Training for this certification is provided by NCDOT approved training sources and by private entities that have been pre-approved to train themselves. If you have questions, contact our web site at <http://www.ncdot.org/doh/preconstruct/wztc/WZTCTrainingProgram/default.html>, or contact Stuart Bourne, P.E. with NCDOT Work Zone Traffic Control Unit at (919) 662-4338 or sbourne@ncdot.gov.
9. The encroaching party shall provide an inspector acceptable to the District Engineer for the work to be performed under this agreement. All costs and expenses for inspection shall be the responsibility of the

encroaching party. The inspector's name, telephone and qualifications shall be provided in writing to the District Engineer prior to beginning construction.

10. A pre-construction conference between NCDOT, the Encroaching Party or the Encroaching Party's designated representative, and the contractor(s) is required prior to commencing any work within the Right of Way.
11. Storage of materials or equipment within the Right of Way is prohibited. During non-working hours, equipment shall be parked as close to the right of way line as possible and shall be properly barricaded so that no equipment obstruction shall be within the Clear Recovery Area.
12. Construction equipment or vehicles shall not be parked on the pavement or roadway shoulder.
13. Construction is authorized to be performed on Monday through Friday during the hours between sunrise and sunset.
14. No lane(s) of traffic shall be closed or alteration of the traffic flow will be allowed on or during holidays, holiday weekends, special events, and/or any other time when traffic is unusually heavy. Holidays and holiday weekends shall include, but not be limited to Easter, Memorial Day, Independence Day, and Labor Day.
15. The encroaching party may delegate the performance of certain provisions of this agreement to contractors or other parties. However, this shall not in any way release the encroaching party from its obligations to the terms and provisions of the encroachment.
16. The Encroaching Party shall provide the District Engineer with "as-built" plans upon completion of the installation.
17. The encroaching party or the contractor(s) for the encroaching party may request a written letter stating that the encroachment has been satisfactorily completed by making a request in writing to the appropriate County Maintenance Engineer. The letter of completion does not relieve the encroaching party from any obligations or responsibilities under the terms and provisions of the encroachment or from obligations or responsibilities for making repairs needed for a reasonable time period.
18. The traveling public shall be warned of construction with complete and proper signing and traffic control devices in accordance with the current **Manual on Uniform Traffic Control Devices (MUTCD)** and the latest **NCDOT Roadway Standard Drawing and Standard Specifications for Roads and Structures**. No work shall be performed in the Right of Way unless this requirement is satisfied. NCDOT reserves the right to require a written traffic control plan for encroachment operations. Traffic control devices and operations shall include, but are not limited to the following:
 - Adequate and appropriate advance warning signs for any and all work zones/closed or obstructed areas.
 - "End Construction" signage beyond the end of all work zones.
 - Adequate and appropriate delineation and control devices for all work zone areas including but not limited to lane closures, disturbed areas, and active work sites.
 - Properly trained and equipped flagmen/women.
 - Proper maintenance of all traffic control devices, including but not limited to proper signage and controls during periods of inactivity and removal of inappropriate traffic control signage and/or devices.
19. The Encroacher 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 Amendments or Supplement thereto. Information as to the above rules and regulations may be obtained from the Division Engineer.
20. Traffic shall not be detoured or rerouted without the prior written approval of the Division Engineer. Two-way traffic shall be maintained at all times.
21. In the event work is completed in less time than permitted, the normal traffic pattern shall be restored as soon as the work has been completed.

22. The Traffic Services Supervisor shall be notified at (910) 947-3930 in Carthage, NC, prior to beginning work on the Right of Way if there are existing NCDOT signs, traffic signals, or signal equipment in or near the proposed work zone. Costs to relocate, replace, or repair NCDOT signs, signals, or associated equipment shall be the responsibility of the Encroacher.
23. Access to the site covered under this agreement shall remain closed (i.e. barricaded) to traffic until all requirements relating to traffic control and signalization have been satisfied.
24. Ingress and egress shall be maintained to businesses and dwellings. Driveways altered during construction shall be restored to a condition equal to that prior to beginning construction.
25. Excavated material shall not be placed on the paved roadway surface at any time unless specifically approved by the District Engineer. Drainage structures shall not be blocked with excavated material at any time.
26. Trenches/excavations/bore pits shall not remain open longer than a 24 hour period. No trench/excavation/bore pit shall be left open overnight except in the event of emergency, in which case the encroacher shall notify the District Engineer and inform him as to the nature and anticipated duration of the emergency. Any excavation left open overnight due to emergency shall be protected and delineated with complete, adequate and appropriate safety and traffic control devices.
27. All backfill shall meet the Statewide Borrow Criteria and shall be placed in accordance with section 300-6 of the latest version of the **NCDOT Standard Specifications for Roads and Structures**. Backfill material shall be free from rocks and debris placed in six inch loose layers and compacted to at least 95% of standard density as determined by AASHTO Method T-99 as modified by NCDOT, except that backfill material placed within eight (8) inches of the pavement subgrade shall be compacted to 100% of standard density. (Copies of these testing procedures are available on request from the NCDOT Materials and Tests Unit.) Each layer must be fully compacted by an approved mechanical tamp before the next layer is placed.
28. Excavated areas adjacent to pavement having more than a 2 inch drop shall be backfilled and made safe with a 6:1 or flatter slope and shall be designated by appropriate delineation during periods of construction inactivity including, but not limited to, night and weekend hours.
29. When burying around the end of a pipe, culvert, or bridge, the utility shall be located a minimum of five (5) feet from the nearest part of the pipe, culvert, or bridge, and buried to a minimum depth of five (5) feet below the stream bed. At points where the utility is placed under existing storm drains by trenching, the trench shall be backfilled with Class M concrete up to the outside diameter of the existing pipe.
30. All excavations inside the theoretical 1:1 slope from the existing edge of pavement to the bottom of the nearest trench wall shall be made in accordance with the following conditions:
 - Traffic shall be moved to a travel lane outside the limits of a theoretical 1:1 slope from the bottom of the nearest trench wall to the pavement surface.
 - Active excavation shoring such as sheet piling shall be installed. The design of the shoring shall include the effects of traffic loads. The design shall be designed and sealed by an engineer registered in North Carolina. Shoring plans and design calculations shall be submitted to the Division Engineer for review prior to construction. **Trench boxes shall not be accepted as positive shoring.**
 - The trench backfill shall meet the Statewide Borrow Criteria. The trench shall be backfilled in accordance with Section 300-6 of the latest version of the **NCDOT Standard Specifications for Roads and Structures**.
 - At the first sign of trench failure, the trench shall be immediately backfilled with materials consisting of A-1, A-3, A-2-4 soils or A-4 soils having a maximum of 45% passing a No. 200 sieve and a maximum P.I. of 6. All work shall cease and the Division Engineer shall be contacted. The Encroaching party or contractor shall repair any damage to the pavement caused by the excavation.
 - All trench excavation inside the limits of the theoretical 1:1 slope from the bottom of the nearest trench wall to the pavement surface shall be completely backfilled and compacted at the end of each construction day. No portion of the trench shall be left open overnight.
 - The length of parallel excavation shall be limited to the length necessary to install and backfill on joint of pipe at a time, not to exceed twenty five (25) feet.

31. Drainage structures and systems shall be preserved and protected. Any structure which is disturbed or damaged during construction shall be immediately restored to its original condition at no expense to the Department of Transportation. All utility installations shall be designed and constructed so as not to hinder, disrupt or interfere with existing storm drainage. All facilities shall pass over or under highway drainage facilities.
32. The encroaching party shall contact Marty C. Tillman, District Engineer at (336) 318-4000 for inspection of forms or grade line prior to placing concrete for curb and gutter. A minimum of 24 hours notice is required for inspections.
33. All disturbed soil areas shall be promptly seeded and mulched. The encroaching party shall obtain the District Engineer's approval of ditch and shoulder grading prior to seeding and mulching.
34. All earth areas shall be regraded, seeded and mulched in accordance with Section 1660 of the latest version of the **NCDOT Standard Specifications for Roads and Structures**. Final determination of soil type shall be made by the Engineer. The following rates in pounds per acre apply:
 - *YEAR ROUND MIXTURE (Sandy Soils)*
 - KY 31 Tall Fescue or Alta Tall Fescue – 50 pounds
 - Pensacola Bahiagrass – 50 pounds
 - Centipede – 5 pounds
 - Fertilizer (10-20-20 analysis) – 500 pounds
 - Limestone – 4000 pounds
 - *YEAR ROUND MIXTURE (Clay Soils)*
 - KY 31 Tall Fescue or Alta Tall Fescue – 100 pounds
 - Kenblue Bluegrass – 15 pounds
 - Fertilizer (10-20-20 analysis) – 500 pounds
 - Limestone – 4000 pounds
 - Add 10 pounds of Kobe or Korean Lespedeza and 10 pounds of Millet to the above mixture from May 1 to August 31.
 - On cut and fill slopes 2:1 or steeper, add 30# Sericea Lespedeza from January 1 to December 31.
 - Fertilizer shall be 10-20-20 analysis. Upon written approval of the Engineer, a different analysis may be used provided the 1-2-2 ratio is maintained and the rate of application is adjusted to provide the same amount of plant food as a 10-20-20 analysis.
35. The encroaching party or any agent acting on behalf of the encroaching party shall exercise care and provide any and all necessary measures and precautions to preserve and protect existing landscaping and roadside plantings within the right of way. Existing landscaping and landscape plantings shall not be disturbed unless approved by the NCDOT Division 8 Roadside Environmental Engineer. All costs associated with restoration or replacement of landscaping or landscape plantings damaged or destroyed by the encroaching party or its agents shall be the responsibility of the encroaching party.
36. In the event it is determined that there is a conflict between the existing landscaping or landscape plantings and the proposed utility installation, the encroaching party or any agent acting on behalf of the encroaching party shall not proceed until the Division 8 Roadside Environmental Engineer has been notified and the conflict has been resolved to his satisfaction.
37. The Division 8 Roadside Environmental Engineer can be contacted as follows:

Roadside Environmental Engineer
902 N. Sandhills Boulevard
P. O. Box 1067Aberdeen, NC 28315
(910-944-2344)
38. The encroaching party shall assume all responsibility, obligation, and liability for maintenance of the structure permitted under this encroachment agreement. This condition shall be conveyed in any future buy, lease, sell or rental agreement. In the event that the encroaching party or any future responsible party should fail to satisfy this condition, NCDOT reserves the right close or remove the structure.
39. The utility proposed under this agreement shall be placed at or near the existing right of way line at a location acceptable to the District Engineer.

40. Utility shall not be placed under guardrail or fence.

41. Notify **Marty C. Tillman, District Engineer, 300 DOT Drive, Asheboro, NC 27204 (336) 318-4000**, prior to beginning work. The encroaching party shall provide the District Engineer with the following information at least 3 working days prior to commencing operations:

- Proposed schedule of operations
- The name(s) and phone number(s) of project contact person(s).
- Tentative locations where directional bores will commence and terminate.

42. All activities or operations approved under this agreement which fall within the project limits or contract period of any active NCDOT project shall require a waiver from the prime Contractor for the NCDOT project, granting the encroaching party access within the project and releasing NCDOT from claims against NCDOT by the prime Contractor resulting from the encroaching party's operations or activities. The NCDOT project shall have precedence and priority over all others.

ROUTE NC1529 (Taylor Rd.) & Catullo Run PROJECT Catullo Run Sidewalk Briar Chapel Community COUNTY OF STATE OF NORTH CAROLINA Chatham

DEPARTMENT OF TRANSPORTATION

RIGHT OF WAY ENCROACHMENT AGREEMENT FOR CURB AND GUTTER, PAVEMENT WIDENING AND STORM DRAINAGE

-AND-
NPP - Briar Chapel, LLC

THIS AGREEMENT, made and entered into this the 1st 8 day of August, 20 16, by and between the Department of Transportation, party of the first part; and NPP - Briar Chapel, LLC 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) NC1529 (Taylor Road) & Catullo Run, located Between 15/501 & Briar Chapel Parkway in Chatham County

with the construction and/or erection of: Approximately 3,000 LF of concrete curb and gutter, 18,000 SF of concrete sidewalk, replacement of a drainage conveyance channel and associated signage and striping.

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 the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said highway.

That the party of the second part agrees to provide during construction 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.

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

R/W (161B) 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:

Monty C. Johnson
Asst. Manager of Right of Way *District Engineer*

ATTEST OR WITNESS:

GTR
GARRISON BROWNE, CONSTRUCTION
MANAGER

[Signature]
Laurie M. Ford, Senior Vice President
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.