



RIGHT-OF-WAY ENCROACHMENT AGREEMENT

TOWN OF LELAND

and

THIS AGREEMENT, made and entered into the _____ day of _____, 20____, by and between the **Town of Leland** , herein after referred to as **“TOWN”** and _____ , herein after referred to as **“GRANTEE”** ,

WITNESSETH:

THAT WHEREAS, the Grantee desires to encroach on the right-of-way of the public road designated as _____ located _____ with the construction and/or erection of _____ ;

WHEREAS, it is to the material advantage of the Grantee to effect this encroachment, and the Town in the exercise of authority conferred to 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, the Town of Leland Standard Provisions (Appendix A), the provisions of North Carolina General Statute § 160-273, and the Town of Leland Code of Ordinances Chapter 46, Article 3 all of which are incorporated herein by reference.

NOW, THEREFORE, IT IS AGREED that the Town hereby grants to the Grantee a license to make this encroachment as shown on the attached plan sheet(s), specifications, and special provisions attached hereto as Appendix A and incorporated herein by reference, to wit:

That the installation, operation, and maintenance of the above described facility will be accomplished in accordance with all North Carolina General Statutes and Town ordinances, standards, and policies, as applicable.

That the said Grantee binds and obligates itself to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said street, nor obstruct nor interfere with the proper maintenance thereof, nor otherwise substantially impair or hinder the use of the street, or right-of-way, as a way of passage. The Grantee agrees to reimburse the Town for all costs incurred for any repairs or maintenance to its right-of-ways or any structure thereon as may be necessary due to the Grantee encroachment pursuant to this agreement.

That, if any time the Town shall require the removal of, or changes in, the location of any encroachment of Grantee pursuant to this Agreement, then the Grantee binds itself, its successors and assigns, to, at no cost to the Town, promptly remove or alter the said facilities, in accordance with the direction of the Town.

That the Grantee agrees to provide, during construction and any subsequent maintenance, appropriate signage, signal lights, flagmen and other warning devices to ensure protection of traffic and motorists in conformance with Town standards and the latest Manual on Uniform Traffic Control Devices for Streets and Highways and Amendments or Supplements thereto.

That the Grantee agrees to restore the right-of-way and all areas disturbed by Grantee's encroachment (including installation and maintenance) to its pre-disturbance condition to the satisfaction of the Town.

The Grantee shall provide prior written notice to the Town before work is initiated and provide written notice to the Town once all Grantee's work as authorized herein has been completed.

This Agreement shall become void if actual construction of the work contemplated herein is not begun within six (6) months from the date of this Agreement, unless a written waiver is secured by the Grantee from the Town. This encroachment agreement only covers work within the Town's Right-of-Way. Grantee is solely responsible for obtaining any required encroachment agreement from the NCDOT as may be applicable to encroach upon NCDOT/State owned roads. The Town makes no representations as to what the NCDOT requires for encroachment upon NCDOT/State owned Rights-of-Way. Grantee is solely responsible for verifying all right-of-way locations on Town roads.

Grantee shall be responsible for obtaining all necessary permanent and/or temporary construction, drainage, utility and/or sight distance easements as appropriate.

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

**TOWN OF LELAND
PUBLIC SERVICES DEPARTMENT**

Name of Grantee

By: _____
PUBLIC SERVICES DIRECTOR

Signature

Please print name and title

**THIS ENCROACHMENT REQUEST
INCLUDES** (Applicant to check all that are applicable)

Address

- Open street cuts
- Bore(s) of roadway(s)
- Repair of existing facilities
 - overhead
 - underground
- New facilities
 - overhead
 - underground

City, State, & Zip

Fax Telephone

24-Hour Emergency contact and telephone number

NOTES:

1. Call North Carolina One-Call Center, Inc. at 1-800-632-4949 for Town Utility locations 72 hours before digging. Field locates by Town personnel shall be approximate. It shall be the responsibility of the Grantee to spot-locate all utilities.
2. Attach 8 1/2" x 11" Plans to this Document as Appendix "B".
3. A copy of this document must be present on the job site at all times.
4. The installation of utilities in Town of Leland's right-of-way may be performed only during regular business hours (8:00 a.m. to 5:00 p.m.) on Monday through Thursday and between 8:00 a.m. and 12:00 noon on Fridays. No work shall be performed in the Town's right-of-way on weekends or holidays.
5. The Town of Leland Public Services Department must be notified in writing prior to commencing work.
6. All bores must be minimum 24 inches in depth.
7. No open street cuts, partial or full street closures allowed without prior written approval from the Town of Leland Public Services Department.
8. Public Services must be notified immediately of any damage to existing infrastructure or utilities.

- \$50.00-General Permit Fee
- \$350.00-Open Cut Fee

\$ _____ Total Fee

*Due at time permit is issued

Appendix A
Town of Leland Right of Way Encroachment
Standard Provisions

NOW, THEREFORE, IT IS AGREED that the Grantor hereby grants to the Grantee a license to make this encroachment pursuant to N.C.General Statutes § 160A-273, subject to the following:

1. The permitted encroachment shall be as follows: The Grantee shall have the right to encroach on the Town's right-of-way as described in Encroachment Agreement hereinabove, subject to the terms, conditions and standard provisions.
2. The Grantee shall design, construct, install and use the encroaching facilities in a safe and proper manner and shall maintain the facilities in a safe and proper condition at all times so that the facilities will not interfere with or endanger the use of the property or surrounding area by the Town or general public. The Grantee shall not obstruct or interfere with proper maintenance or use of the Town's property and facilities.
3. The Town may at any time and for any reason terminate this Agreement. In addition, the Town may at any time and for any reason require the removal, repair, alteration or change in the location and/or design of the encroachment or of its own property and facilities. In the event the Town shall require the removal, repair, alteration or change in the location and/or design of the encroachment or of its own property and facilities, the Grantee shall at the Town's option promptly remove, repair, alter and/or replace the encroachment without any cost to the Town, or reimburse the Town in full for all costs incurred for the repair, alteration, removal and/or replacement of said encroachment.
4. To the fullest extent permitted by law, Grantee shall release, indemnify, keep and save harmless the Town, its agents, officials and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials or employees of the Town or third persons, and to all property proximately caused by, incident to, resulting from, arising out of, or occurring in connection with, directly or indirectly, the design, construction, installation, maintenance or use by Grantee of the encroaching facilities described herein (or by any person acting for the Grantee or for whom the Grantee is or is alleged to be in any way responsible) whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of the Grantee, its agents, officials and employees or otherwise. The provisions of this section shall include any claims for equitable relief or for damages (compensatory or punitive) against the Town, its agents, officials and employees including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses. Expenses as used herein shall include without limitation the costs incurred by the Town, its agents, officials and employees, in connection with investigating any claim or defending any action, and shall also include reasonable attorneys' fees by reason of the assertion of any such claim against the Town, its agents, officials or employees. The Grantee expressly understands and agrees that any performance bond or insurance protection required by the Grantee or the Town shall in no way limit the Grantee's responsibility to release, indemnify, keep and save harmless and defend the Town as herein provided. The intention of the parties is to apply and construe broadly in favor of the Town the foregoing provisions subject to the limitations, if any, set forth in N.C.G.S. §22B-1.
5. Grantee shall take out and maintain during the life of this Agreement comprehensive general liability insurance in an amount not less than \$1,000,000 for injuries, including accidental death, and/or property damage for any one occurrence. The insurance must be written on an occurrence basis and must provide for protection against liability arising from the encroachment by Grantee or his contractors upon the public right-of-way. Grantee shall also purchase and maintain contractual liability insurance for protection against liability assumed under the indemnity provisions of this Agreement in an amount not less than that specified above for comprehensive general liability insurance. The Grantor (Town of Leland) shall be named, and endorsed, as an additional insured on all required insurance policies. The Grantee shall furnish the schedule of insurance carried under this Agreement in the form of a document attested by the insurance carrier or his agent stating and itemizing the several coverages as provided above. The Grantee shall have the appropriate insurance carriers attach a copy of the contractual liability endorsements required evidencing the fact that they are providing this coverage. The insurance carrier shall also certify on these documents that it will notify the Town by registered mail at least ten (10) days prior to any cancellation or non-renewal of these coverages. The Town reserves the right to inspect any policy and to approve its form, including all exclusions and endorsements.
6. The Grantee agrees to obtain all the necessary permits, pay any associated permit fees, and assume the actual cost of any inspection of the work required by local, state or federal law, rule or regulation or considered to be necessary by the Town Manager or his designee.
7. In the case of noncompliance with any term of this Agreement by the Grantee, the Town reserves the right to stop all work until the facility has either been brought into compliance or been removed from the Town's utility easement, right-of-way, street or other property and to recover from Grantee all the Town's associated costs and expenses.
8. This Agreement shall remain subject to outstanding franchise agreements and the Town Charter provisions related to the granting of franchises. Nothing herein shall be construed to grant any exclusive or perpetual right or property interest to Grantee in or to any area or property which either belongs to the Town or is dedicated to public use.
9. Grantee agrees to construct, install, operate, maintain and use the encroachment and related facilities in a safe and proper condition so that it will not interfere with or endanger travel upon the Town's right-of-way, nor obstruct or interfere with the proper use or maintenance thereof. Grantee further agrees to reimburse Town for the cost incurred for any repairs or maintenance to its streets, roadways, facilities, structures, or other property necessitated by the installation, existence and/or use of the Grantee's facilities.

10. This Agreement is personal, does not run with the land, and may not be assigned or transferred without the express written approval of the Town; provided, however, that any obligations of the Grantee under this Agreement shall be binding upon Grantee's heirs, successors, agents, officials, employees, independent contractors and subcontractors in the event of nonperformance, regardless of the cause.

11. Grantee will comply with any and all applicable federal, state and local standards, regulations, laws, statutes and ordinances regarding toxic, hazardous and solid wastes and any other pollutants; soil erosion and sedimentation control; public and private nuisances; health or safety; and zoning, subdivision or other land use regulations. Grantee will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all orders and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Management, Health Departments, and any other federal, state or local agency having jurisdiction, to ensure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes and ordinances or any permits or conditions issued thereunder.

12. Grantee, for purposes of this Agreement, is an independent contractor and not an agent of the Town. As such the Grantee shall not be entitled to any Town employment benefits (including vacation, sick leave, insurance, workmen's compensation or pension and retirement benefits), and the Town shall not assume vicarious liability for Grantee's acts or omissions.

13. No paid employee of the Town shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of work for Grantee.

14. The Town's failure to insist upon the strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.

15. All of the terms and conditions contained herein shall be interpreted in accordance with the laws of the State of North Carolina. In the event of a conflict between the various terms and conditions contained herein or between these terms and other applicable provisions, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard.

16. This Agreement, including all documents incorporated therein, constitutes the entire understanding of the parties.

17. The parties will make and execute all further instruments and documents required to carry out the purposes and intent of this Agreement.

18. This Agreement is governmental in nature for the benefit of the public and is not intended to be for private profit or gain. Any fees charged hereunder are intended to reflect as closely as possible the Town's actual cost and neither party intends to waive the Town's sovereign immunity by reason of this Agreement.

19. If any section, subsection, paragraph, sentence, clause, phrase or portion of this agreement is for any reason held invalid, unlawful or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

20. This Agreement shall not be modified or otherwise amended except in writing signed by the parties.

21. The designations Grantee, Grantor and Town as used herein shall include singular, plural, masculine, feminine or neuter as required by context.