



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY  
GOVERNOR

P.O. BOX 25201, RALEIGH, N.C. 27611-5201

LYNDO TIPPETT  
SECRETARY

December 28, 2006

RECEIVED  
JAN 03 2006  
Withers & Ravenel

Mr. Thomas L. Fonville  
Community Properties, Inc.  
McBane Subdivision  
1000 St. Albans Dr., Suite 400  
Raleigh, NC 27609

and

Mr. Mike Meyers  
Heater Utilities, Inc.  
202 Mackenan Dr.  
Cary, NC 27511

**SUBJECT: ENCROACHMENT AGREEMENT (16.6) (19-3355)**  
**8" DIP Water Main Encased**  
**SR 1520**  
**Chatham County**

Dear Mr. Fonville & Mr. Meyers:

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

60 LF of 8" Water main (Encased) crossing SR 1520 in Chatham County.

This agreement is approved subject to the Special Provisions, which are attached to and made a part of the Encroachment Agreement.

Sincerely,

Timothy Johnson, P.E.  
Division Engineer

TJ/jek

Attachments

Cc: Robert Memory, State Utility Agent, Utility Coordination Unit (w/orig.)  
R. E. Blakley, P.E., District Engineer  
Mr. John C. Ihnatolya, P.E., Withers & Ravenel  
file

(19-3355)

DEPARTMENT OF TRANSPORTATION

THREE PARTY RIGHT OF WAY

ENCROACHMENT AGREEMENT ON  
PRIMARY AND SECONDARY SYSTEM

Community Properties, Inc.

-AND-

Heater Utilities, Inc.

THIS AGREEMENT, made and entered into this the 28<sup>th</sup> day of December, 20 06,  
by and between the Department of Transportation, party of the first part; and Community Properties, Inc.  
party of the second part; and Heater Utilities, Inc.  
party of the third 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 SR 1520, located 0 linear feet from the intersection  
of SR 1520 and SR 1547

with the construction and/or erection of an 8" DIP waterline crossing SR 1520

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 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.

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.

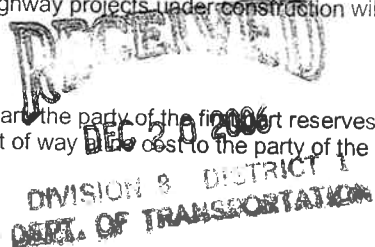
That the party of the second part agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the  
Division Engineer of the party of the first part. The party of the second part agrees to exercise every reasonable precaution during  
construction and maintenance 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 construction 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 the 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.

During the performance of this contract, 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.

That when title to the subject that constitutes the aforesaid encroachment passes from the party of the second part and vests in the party of the third part, the party of the third part agrees to assume all responsibilities and rights and to perform all obligations as agreed to herein by the party of the second 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.

WITNESS:

John C. Morisey, III  
John C. Morisey, III

WITNESS:

Robert Thomas  
Asst Secretary  
Heater Utilities, Inc.

DEPARTMENT OF TRANSPORTATION

BY:

Thomas L. Fonville  
DIVISION ENGINEER

Thomas L. Fonville  
Thomas L. Fonville

Community Properties, Inc.

1000 St. Alban's Dr., Suite 400 Raleigh, NC 27609  
Second Party

Michael J. Myers  
Michael J. Myers

Heater Utilities, Inc

202 MacKenan Dr. Cary, NC 27511

Third Party

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DIVISION  
DEPT. OF

ICT 1  
TRANSPORTATION

**ENCROACHMENT SPECIAL PROVISIONS**  
**COMMUNITY PROPERTIES, INC. & HEATER UTILITIES, INC.**  
**19-3355 (CHATHAM)**

*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 rights to stop all work unless evidence of approval can be shown.
2. Notify the following prior to beginning work:
  - ***B.F. Sloan, County Maintenance Engineer***  
1404 E. Raleigh St.  
Siler City, N.C. 27344  
(919) 742-3431
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 **NCDOT Standard Specifications for Roads and Structures 2006**, 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. 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.
9. Construction equipment or vehicles shall not be parked on the pavement or roadway shoulder.

10. Construction is authorized to perform on Monday through Friday during the hours between sunrise and sunset.
11. 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.
12. Written notification shall be provided to the District Engineer upon completion of the work proposed under this agreement. Materials test frequencies and methods shall be in conformance with the NCDOT Materials and Tests guidelines, or as directed by NCDOT. A letter of approval, or recommendations for compliance, will be provided upon receipt and review of test reports.
13. 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)**. 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.
  - 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.
14. Traffic shall not be detoured or rerouted. Two way traffic shall be maintained at all times.
15. 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.
16. 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.
17. 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.
18. 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.
19. All backfill shall meet the Statewide Borrow Criteria and shall be placed in accordance with section 300-6 of **NCDOT Standard Specifications for Roads and Structures 2006**. 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. 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.
20. 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.

21. 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 streambed. 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.
22. Drainage structures and systems shall be preserved and protected. Any structure that 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.
23. The dry bore method of boring shall be utilized and made perpendicular to the roadway. Any bore exceeding 6 inches shall be encased.
24. The grade of top of pipe or casing shall provide the following minimum bury:
  - Crossing under roadways - 3 feet from pavement surface
  - Longitudinal installations - 3 feet from finished grade
  - Crossing under ditches - 2 feet from ditch line
25. Hydrants shall be placed behind the roadway ditch and as near the right of way line as possible.
26. All service connections shall be bored unless construction is of ductile iron or equal quality material with satisfactory leakproof joints.
27. All blow-off assemblies shall be directed away from any travel lane.
28. All blow-off valves, vaults, manholes and other appurtenances within the NCDOT right of way shall be located behind the ditch and at the right of way line. Manholes and/or vaults shall not be placed in the ditch line, side slopes of ditches or in the pavement.
29. All manholes and/or vaults shall be of an NCDOT pre-approved design. Manholes or vaults shall be designed for HS-20 live loads and conform to the **NCDOT Standard Specifications for Roads and Structures 2006**, the **NCDOT Roadway Standards Drawings**. Any proposed structure which is not of a design pre-approved by NCDOT shall be submitted to NCDOT with details and design calculations sealed by a Professional Engineer for approval prior to construction. A list of approved structures may be obtained from NCDOT Design Services at 919-250-4128.
30. Manhole rings and covers and valve covers shall be a traffic bearing type designed for HS-20 loading and approved for use within NCDOT right of ways. All such appurtenances shall be installed flush to or below the surface of the ground in such a manner that they do not pose obstacles or obstructions to pedestrians, vehicles, equipment, or roadway maintenance operations.
31. Manholes/Valves should not be located in the pavement or shoulders of any State road. Exceptions may be made on roads at those locations where manholes/valves are essential parts of existing lines that are permitted to remain in place under existing and proposed roadways. Every effort should be made to minimize such installations and to avoid their locations in wheel paths or street intersections, insofar as practicable. Manholes should be designed and located in such a manner that will cause the least interference with roadway users, other utilities, and future highway expansion.
32. Where an installation is by open cut, the pavement shall be neatly sawed or cut perpendicular to the surface. The replacement base and surface shall extend a minimum of one foot beyond the excavated opening on each side and shall be equivalent to the original base and pavement or the design as stated in the encroachment agreement, whichever is greater. The minimum pavement design for pavements on secondary roads shall be:
  - Flowable fill to within 3" of finished grade
  - 3 inches Asphalt Surface Course – S9.5B
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 **NCDOT Standard Specifications for Roads and Structures 2006**. The Engineer shall make final determination of soil type. 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. Notify the County Maintenance Engineer's office at (919) 742-3431, 1404 E. Raleigh St. Siler City, N.C. 27344, prior to beginning work. The encroaching party shall provide the County Maintenance 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). (See Special Provision 12)