



MEMORANDUM

To: Mayor and Members of the City Council

From: Montrè Freeman, City Manager
Dwan Bell, Public Utilities Director
Deborah Malenfant, Executive Director, ECDI
Alicia Steward, Finance Director
Jon Hawley, Grants Administrator

Date: May 24, 2024

Re: Consideration Execution of Encroachment Agreement with NCDOT for Streetscaping

BACKGROUND:

As the City Council is aware, the City has won major grants to support the "Water Street Transformation Project" (WSTP) that will beautify the Water Street corridor between Main and Ehringhaus Streets, including new, brick-banded sidewalks and lighting. The NC Department of Commerce has awarded us nearly \$1 million in two separate grants (one of which is still pending), and Elizabeth City Downtown, Inc., has also committed a special legislative appropriation of \$150,000 towards the project. Some local funds are also committed to the project, including a voluntary ECDI match of \$25,000 and a required City match of \$15,000, the latter of which was presented to and approved by the Council on March 25, 2024.

Following a competitive procurement last year, the City Council approved hiring Kimley-Horn to provide engineering services for the project. Kimley-Horn has worked well and efficiently on our project, and we are preparing to seek bids and initiate construction later this year.

Constructing our project will require crossing into the state's rights of way on Water Street, a state-maintained route, and so we must have the NC Department of Transportation's permission to do so. To that end, we are requesting the Council enter into the attached encroachment agreement with NCDOT.

ANALYSIS:

This Encroachment Agreement is a standard document for a streetscaping project like ours. It does not impose any direct costs upon the City, but does detail our responsibilities

in constructing upon the state's right-of-way. Among other provisions, it requires proper and safe management of the construction zone, proper site restoration, and performing construction inspections as NCDOT may require.

The City Attorney has reviewed this agreement and found it acceptable. City staff request the Council's approval so that we have this in place well before construction starts. As we have previously reported, the Water Street project must adhere to a strict schedule due to grant deadlines.

STAFF RECOMMENDATION:

By motion: Accept the enclosed encroachment agreement, and authorize necessary signatures.

DEPARTMENT OF TRANSPORTATION
-AND-
City of Elizabeth City
306 E Colonial Avenue, Elizabeth City, NC 27909

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

THIS AGREEMENT, made and entered into this the _____ day of _____, 20____, by and between the Department of Transportation, party of the first part; and City of Elizabeth City, 306 E Colonial Avenue, Elizabeth City, NC 27909 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) N and S Water Street (SR 1268), located along Water Street from E Ehringhaus Street to E Main Street.

with the construction and/or erection of: sidewalk replacements, new street lighting, and electrical infrastructure. Also includes some storm drain, wheelchair ramp, and driveway replacements.

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: _____
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 State Utilities Manager. 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.