

Attachment L

NHDOT Use and Occupancy Agreement Template

Misc. Engineering
1832X – District X
X
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USE AND OCCUPANCY AGREEMENT

- 1. The following entities shall be parties to this Agreement made in duplicate this _____ day of _____, _____, and shall be bound by its provisions:
 - A. The _____, hereinafter called the "*", incorporated in the State of New Hampshire, having a principal place of business at _____.
 - B. The STATE OF NEW HAMPSHIRE, hereinafter called the "State", acting by and through the Commissioner, New Hampshire Department of Transportation (NHDOT), 7 Hazen Drive, PO Box 483, Concord, NH, 03302-0483.

Note (Search and Replace): * Utility Company Name or substitution in 1A above
** (Water)(Sewer)(Power)(Gas)(Telephone)()

- 2. The *, through its consultant, has submitted a set of plans to the State to be incorporated in the Excavation/Encroachment Permit for installation of facilities within the highway right-of-way; and the State has reviewed and approved these plans.
- 3. This Agreement covers the Use and Occupancy of the Limited/Controlled Access Right-of-Way (LAROW/CAROW) of _____ as shown on the attached plans. Such occupancy having been granted by execution of this document and issuance of Excavation/Encroachment Permit # _____ covers the installation of ** facilities at the location described as follows:

_____ in the City/Town of _____, County of _____, New Hampshire.

The approved plans titled _____, dated _____ as prepared by _____ are hereby incorporated in this Agreement.

- 4. The * shall submit any proposed alterations to said plans in writing to the State for review and approval by the State.
- 5. The * shall submit proof of Bonding and Insurance required for the Excavation/Encroachment Permit.

6. All materials supplied and work performed by the * or its contractor in the installation of the ** facilities shall be subject to the inspection of a representative of the State. Any deficiencies in materials, methods of construction, or workmanship shall be promptly corrected to the satisfaction of the State.
7. The State has initiated the development of a Global Information System (GIS) to identify facilities, including drainage and utilities within the ROW. The * shall submit GPS coordinates based upon the New Hampshire State Plane coordinates system on the North American Datum of 1983 (1996 adjustment by NGS) of the as built **. The coordinates shall be submitted to the Chief of Design Services, NHDOT, 7 Hazen Drive, PO Box 483, Concord, NH, 03302.
8. The * shall submit its written maintenance policies and procedures which are to be used for the inspection, repair, and maintenance of said facilities to the State for review and approval. Such procedures shall be approved by the State prior to initial operation of the constructed facilities.
9. The * shall give the State a minimum of two (2) business days notice of scheduled or nonscheduled maintenance of the ** facilities except emergency repairs, for which the * shall contact the State while such emergency repairs are being done. Regular maintenance, inspection, and updating by the * shall not be conducted without prior notification to the State.
10. The costs and expenses for the installation and maintenance of the ** facilities shall be the responsibility of the *.
11. The * or their contractor is solely responsible for the presence of their equipment along the State's LAROW/CAROW. The * agrees the installation shall be consistent with the State's right to access if necessary.
12. The * agrees that access to the ** facilities for scheduled or nonscheduled maintenance or for any other purpose shall be made in accordance with the following procedure:
 - a) Prior to working on or crossing the LAROW/CAROW of _____, NHDOT Bureau of Highway Maintenance District ____/Turnpikes shall be notified and work will be scheduled with them.
 - b) At all times when working within _____, traffic control devices shall be provided by the * as required by the State.
 - c) Any and all work done by the * at these locations shall conform to standards set by the State.
 - d) Additional requirements or modifications of the above may be further negotiated with and approved by the NHDOT Bureau of Highway Maintenance District ____/Turnpikes and incorporated by reference.

13. The Use and Occupancy of the LAROW/CAROW by the * shall be at the sufferance of the State. The State may terminate this Agreement upon ten (10) days notice in writing to the * at the above address. Upon the termination of this Agreement pursuant to this paragraph, the * shall have ninety (90) days to remove said ** facilities and all appurtenances from the LAROW/CAROW.
14. The * shall promptly and at its sole expense make such relocations and adjustments, including removal of facilities if required by the State, as may be necessary to accommodate highway or bridge construction, reconstruction, repair, or maintenance. Such relocation and adjustment shall be at the sole expense of the *. Notwithstanding any statute or regulation to the contrary which may now exist or hereafter be created, no cost of such relocation or adjustment shall be eligible for participation by the State or Federal Highway Administration (FHWA); and the * hereby waives any right it may now have or hereafter acquire to request such participation. EXCEPT THAT, the provisions of RSA 228:22 shall govern where applicable.
15. Where applicable, in accordance with RSA 72:23, I(b), this agreement is made between the parties subject to the condition that the Company shall pay all duly assessed personal and real estate taxes. Failure of the Company to pay the duly assessed personal and real estate taxes when due shall be cause to terminate this agreement by the State. In accordance with the requirements of RSA 72:23, I(b), the Company shall be obligated to pay personal and real estate taxes on structures or improvements added.
16. The * agrees that the State, its agencies and their employees, agents, and representatives shall not incur any legal liability whatsoever to the * for any damage to the ** facilities or to any other property or employee of the * or to any other person or entity hired by or affiliated with the * resulting from or arising out of any ownership and use of and operations within the LAROW/CAROW, including but not limited to inspection, maintenance, cleaning, snow removal, construction, reconstruction, rehabilitation, and repair.
17. The * shall indemnify, defend, and hold harmless the State, NHDOT, United States Department of Transportation (USDOT), FHWA, and their employees, agents, and representatives against any and all claims, actions, causes of action, demands, liabilities, losses, penalties, damage of any kind, and failure to comply with any utility-type commission's permitting, regulations, and guidelines, including all actions for indemnity and/or contribution, and including reasonable attorneys' fees, resulting from or arising out of any * or State ownership, use of, and operations within the LAROW/CAROW, including but not limited to inspection, maintenance, cleaning, snow removal, construction, reconstruction, rehabilitation, and repair of either the ** or the highway facilities. The indemnification provided under this paragraph shall include, but not be limited to, any and all claims or demands for loss of revenue, income, business or economic opportunity, customers, profits, presence of and occupation of, and service resulting from or arising out of any inability or failure of the ** facilities to provide service as intended by the *.
18. The * shall, at the request of the State and at the expense of the *, provide whatever protection is deemed necessary by the * or by the State in the event the State performs

any work on the highway, including but not limited to inspection, maintenance, cleaning, snow removal, construction, reconstruction, rehabilitation, and repair of the highway facilities.

19. Any damage to the LAROW/CAROW and the highway facilities contained therein which, as determined by the State, is caused by, results from, or arises out of the installation, maintenance, or presence of the ** facilities shall be repaired by the State. The * shall fully compensate the State for all costs associated with the repair of any such damage.
20. Upon breach of any provision of this Agreement by the *, the State may either (a) enforce the breach provision by means of an injunction proceeding, or (b) seek damages, including all consequential damages which arise out of the breach, or both. In any such action to enforce the Agreement or collect damages for its breach, the * shall reimburse the State for all attorneys' fees reasonably incurred by the State in such action.
21. Notwithstanding any provision of this Agreement, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.
22. This Agreement may be amended only by an instrument in writing signed by the parties hereto and only after approval of such amendment by the State of New Hampshire and the FHWA, if applicable.
23. This Agreement shall be construed in accordance with the law of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns including all agencies, departments, bureaus, authorities, boards, commissions, and committees of the State.
24. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit. The State also shall not be responsible for any negligent/intentional acts of third parties.
25. The * shall not assign or otherwise transfer any interest in this Agreement without the prior written consent of the State, except that no consent shall be required for a transfer or assignment to a wholly owned subsidiary or affiliate of the * or any parent company of the *.
26. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

THE STATE OF NEW HAMPSHIRE
Department of Transportation

UTILITY COMPANY NAME

BY: _____
David M. Rodrigue, P.E.
Director of Operations

BY: _____
(Signature)

(Typed Signature)

(Title)

_____ JAM