

**ALABAMA DEPARTMENT OF TRANSPORTATION
AGREEMENT TO TRIM TREES AND UNDERBRUSH
BY UTILITIES ON RIGHT-OF-WAY**

County _____

Route Number _____

Milepost _____

Bonding Agency _____ Bond Number _____

Associated Permits and/or Documents _____

<p><i>FOR OFFICIAL USE ONLY</i></p> <p>DATE RECEIVED FROM APPLICANT: ___/___/___</p> <p>PERMIT NUMBER: _____</p>
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THIS AGREEMENT is entered into this the ____ day of _____, 20____, by and between the Alabama Department of Transportation acting by and through its Transportation Director hereinafter referred to as ALDOT and _____, hereinafter referred to as the UTILITY.

WITNESSETH

WHEREAS, the UTILITY applies for permission to perform necessary maintenance to its utility lines along AL/US Route No. _____, beginning at Milepost No. _____ and ending at Milepost No. _____. This maintenance may consist of performing minor trimming to trees of less than 4” caliper, underbrush, and shrubs and herbicide applications for cut stump treatments along ALDOT ROW. All cut stump treatments shall be done at the time of tree trimming. All herbicide application shall be in accordance with the current edition of Chapter IV: ALDOT Herbicide Treatment Recommendations.

NOW, THEREFORE, in order to preserve the right-of-way in an appropriate functional condition it is agreed between the parties hereto as follows:

(Initials)

1. A copy of the Agreement and the plans will be kept at the site of work at all times by the UTILITY.

(Initials)

2. ALDOT does not grant the UTILITY any right, title, or claim to any highway right-of-way.

(Initials)

3. The UTILITY will not store cuttings, material, excess dirt, or equipment on the right-of-way and in event of multi-lane highways, in the median strips. The pavement will be kept free by the UTILITY from mud and from excavation waste from trucks or other equipment. On completion of the work, all excess material will be removed from the right-of-way by the UTILITY.

____ (Initials)

4. The UTILITY shall notify the District Administrator at least forty-eight (48) hours prior to any trimming or cutting beginning. No vegetation shall be trimmed or cut that is in place as a result of a Federal Aid landscape project.

____ (Initials)

5. The UTILITY shall notify the District Administrator at least forty-eight (48) hours after trimming or cutting is completed so that an inspection of the site may be performed. All cut vegetation shall be removed from the highway right-of-way by the UTILITY at no cost to ALDOT.

____ (Initials)

6. The trimming or cutting shall not adversely affect the aesthetics of the right-of-way. Any clean-up necessary for the cutting of vegetation not approved by ALDOT will be at the UTILITY's expense. Any damage to the ALDOT right-of-way incurred during the execution of this permit will be repaired immediately and at the UTILITY's expense.

____ (Initials)

7. The Federal Water Pollution Control Act, The Federal Insecticide, Fungicide, and Rodenticide Act, The Alabama Water Pollution Control Act, The Alabama Environmental Management Act, The Clean Water Act (1987), and the Alabama Nonpoint Source Management Program (1989) are hereby made a part of this permit by reference.

____ (Initials)

8. The UTILITY will conform to the regulations of the Environmental Protection Agency (EPA) and of the Alabama Department of Environmental Management (ADEM), latest edition, for both installation and maintenance of such facilities.

The UTILITY will provide proof of applicable permit coverage and conform to the above referenced regulations for both the facility installation and maintenance of permitted facilities and areas of rights-of-way. The UTILITY must provide a copy of the Notice of Intent (NOI) issued by ADEM. This will assure compliance with Phase II of stormwater construction requirements. In the event that a NOI is not required, Applicant must submit to ALDOT a Best Management Practices (BMP) plan to control sediment run-off.

____ (Initials)

9. In the event that ALDOT is issued a citation or any other enforcement document by ADEM/EPA for failure to comply with applicable requirements, it shall be the responsibility of the UTILITY to bring all BMPs into compliance and to pay for any fines, assessments, etc. that may be issued to ALDOT by ADEM/EPA.

____ (Initials)

10. Underground Damage Prevention Legislation, Alabama Act 94-487, is hereby made a part of this permit by reference. The UTILITY will conform to the above referenced regulations for both the facility installation and maintenance of permitted facilities and areas of rights-of-way. Should the permitted work require a locate request ticket, no work shall begin until a copy of such ticket is obtained and the UTILITY shall keep a copy of such ticket at the site of work.

____ (Initials)

11. The UTILITY will provide all necessary and adequate safety precautions such as signs, flags, lights, barricades, and flagmen in accordance with the national Manual on Uniform Traffic Control Devices, of record in ALDOT.

____ (Initials)

12. This permit is valid for the contract period which is defined as follows: All proposed work as described and submitted in the permit documents must be completed within 90 days from the approved date of the permit and for a period covering one year from ALDOT acceptance of proposed work.

____ (Initials)

13. The UTILITY will perform or cause to be performed the work applied for in this permit contract and will restore the highway in the work area in as good condition as the same was prior to the work and will maintain the accomplished work and highway work area in a condition satisfactory to ALDOT. Should the UTILITY not maintain the work or create an unsafe condition during the contract period, ALDOT reserves the right to remove any work and restore the ROW to a safe condition at the expense of the UTILITY and the UTILITY agrees to pay ALDOT all such costs as a result.

____ (Initials)

14. Once work is begun, the UTILITY shall pursue the work continuously and diligently until completion. Should the UTILITY feel that the work cannot be completed in a 90 day period, they shall submit in writing (30 days prior to the termination date) to ALDOT the reasons for an extension of time. ALDOT will determine whether an extension may be approved.

____ (Initials)

15. The UTILITY will file with ALDOT an acceptable certified check or bond in the penal amount of \$ _____ (Bond Number: _____) to guarantee the faithful performance of this permit contract in its entirety during the contract period as defined in item 12. Upon satisfactory completion and acceptance of all work provided for in this permit contract, the check or bond, as applicable, will be returned to the UTILITY; otherwise, the proceeds from the check, or any amount received by ALDOT as a result of the bond, will be applied to complete and fulfill the permit contract terms.

16. Indemnification Provisions. Please check the appropriate type of applicant:

By entering into this agreement, the UTILITY is not an agent of the State, its officers, employees, agents or assigns. The UTILITY is an independent entity from the State and nothing in this agreement creates an agency relationship between the parties.

If the UTILITY is an incorporated municipality or gas district then:

Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the UTILITY shall defend, indemnify, and hold harmless the State of Alabama, ALDOT, its officers, officials, agents, servants, and employees, in both their official and individual capacities, from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the UTILITY, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the UTILITY pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees, caused by the negligent, careless or unskillful acts of the UTILITY its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the UTILITY, its agents, servants, representatives or employees, or anyone for whose acts the UTILITY may be liable.

If the UTILITY is county government then:

The UTILITY shall be responsible at all times for all of the work performed under this agreement and, as provided in Ala. Code § 11-93-2 (1975), the UTILITY shall protect, defend, indemnify and hold harmless the State of Alabama, The Alabama Department of Transportation, its officials, officers, servants, and employees, in their official capacities, and their agents and/or assigns.

For all claims not subject to Ala. Code § 11-93-2 (1975), the UTILITY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, servants, and employees, in both their official and individual capacities, and their agents and/or assigns from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of, connected with, or related to the (1) work performed under this Agreement, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the UTILITY pursuant to the terms of this agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the UTILITY, its agents, servants, representatives, employees or assigns.

If the UTILITY is a state governmental agency or institution then:

The UTILITY shall be responsible for damage to life and property due to activities of the UTILITY of employees of UTILITY in connection with the work or services under this Agreement. The UTILITY agrees that its contractors, subcontractors, agents, servants, vendors or employees of UTILITY shall possess the experience, knowledge and skill necessary to perform the particular duties required or necessary under this Agreement. The UTILITY is a state institution and is limited by the Alabama Constitution in its ability to indemnify and hold harmless another entity. The UTILITY maintains self-insurance coverage applicable to the negligent acts and omissions of its officers and employees, which occur within the scope of their employment by the UTILITY. The UTILITY has no insurance coverage applicable to third-party acts, omissions or claims, and can undertake no obligation that might create a debt on the State Treasury. The UTILITY agrees the ALDOT shall not be responsible for the willful, deliberate, wanton or negligent acts of the UTILITY, or its officials, employees, agents, servants, vendors, contractors or subcontractors. The UTILITY shall require, its contractors and its subcontractors, agents, servants or vendors, as a term of its contract with the UTILITY, to include the ALDOT as an additional insured in any insurance policy providing coverage for the work to be performed pursuant to and under this Agreement and to provide the UTILITY a copy of the insurance policy declaration sheet confirming the addition of the ALDOT thereto.

If the UTILITY is not a county, incorporated municipality, or state governmental agency or institution then:

The UTILITY will protect, defend, indemnify and hold harmless the State of Alabama, ALDOT, the officials, officers, and employees, in both their official and individual capacities, and their agents and/or assigns, from and against any and all actions, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Permit, and/or the UTILITY's failure to comply with all applicable laws or regulations.

____ (Initials)

17. This agreement when executed will not be valid or binding until the UTILITY has complied with all existing ordinances, laws, and zoning boards that have jurisdiction in the county, city, or municipality in which the facilities are located.

____ (Initials)

18. The attached map/drawing are incorporated herein and deemed a part of the Permit identified as Attached Exhibit A. The identifiable/highlighted lines on Exhibit A are to be used as a guide that is deemed as the area of work.

____ (Initials)

19. Failure to comply with each and every stipulation in this permit shall be grounds to deny future consideration to this UTILITY.

____ (Initials)

20. This permit applies only to work performed on State highways. Any proposed trimming on Interstate routes must be submitted on a MB-05, Grading and Landscaping Permit.

This Agreement is deemed to be executed on the date hereinabove set forth by the parties hereto in their respective names by those persons and officials thereunto duly authorized. Witness our hands and seals, this the ____ day of _____, 20____.

WITNESS:

Name of Utility

Signature and Title of Utility Representative

Typed or Printed Name of Signee

Mailing Address of Utility (Line 1)

Mailing Address of Utility (Line 2)

Telephone Number of Utility

FOR OFFICIAL USE ONLY

RECOMMENDED FOR APPROVAL:

DISTRICT: _____
Printed Name Signature Date

AREA: _____
Printed Name Signature Date

REGION: _____
Printed Name Signature Date

APPROVED:
ALABAMA DEPARTMENT OF TRANSPORTATION
ACTING BY AND THROUGH ITS TRANSPORTATION
DIRECTOR

(PLEASE CHECK APPROPRIATE BOX)

- CENTRAL OFFICE
- REGION
- AREA
- DISTRICT

By: _____
Printed Name Signature Date

This permit shall expire on: _____