

SDDOT LOCAL ROADS PLAN

Chapter 7 Encroachments



Right-of-way is a very important part of the overall design and function of a highway. The main purposes of right-of-way are to accommodate construction, adequate drainage, proper maintenance of a highway, and to create an obstruction free area for the safety of the traveling public.

An encroachment of the right-of-way can be in the form signs, fences, buildings, trees, vegetation, etc. It is against the law to plant crops within the right of way of a public road. They can create a visual obstruction and possibly limit sight distances for motorists, especially near intersections.

Highway right of way also is used by utility companies to install gas lines, power lines, telephone lines and fiber optic cable. Plowing and tilling can damage these lines potentially creating a dangerous situation for farmers, utility workers and area residents, not to mention service interruptions.

Along with safety concerns, farming activity in the right of way can create erosion and landscape changes that can affect proper drainage, clog culverts and jeopardize the stability of the shoulders and the roadbed itself.

South Dakota has several laws specific to the protection and maintenance of the right of way.

31-31-1. Weed removal on state or county roads. The Department of Transportation and board of county commissioners of the various counties shall cut or remove, or cause to be cut or removed, grass, weeds, and brush growing within the right-of-way of all public highways within their respective jurisdiction and over which such department and boards exercise control as to repair and maintenance. A violation of this section is a petty offense.

Source: SL 1939, ch 295, § 1; SDC Supp 1960, § 62.0201; SDCL, § 31-31-7; SL 1985, ch 15, § 37.

31-32-1. Intentionally damaging highway or bridge--Felony. Every person who intentionally digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such way, is guilty of a Class 6 felony.

Source: PenC 1877, § 686; CL 1887, § 6875; RPenC 1903, § 704; RC 1919, § 4308; SDC 1939, § 13.4515.

31-32-3.1. Intentional dumping on highway right-of-way prohibited--Violation as misdemeanor. No person except as provided in § 31-32-3.2 may intentionally dump any load of any material or cargo on or within the highway right-of-way. A violation of this section is a Class 1 misdemeanor.

Source: SL 1987, ch 212, § 1.

31-32-6. Duty to notify where bridge or highway is obstructed. It shall be the duty of every person who so injures or obstructs any bridge or highway as to

render the same unsafe immediately to put up a danger sign and use diligence to notify one or more of the members of the board or commissioners having jurisdiction or supervision over such bridge or highway of such injury or obstruction. A violation of this section is a petty offense.

Source: SL 1917, ch 258, §§ 1, 2; RC 1919, §§ 8587, 8588; SL 1919, ch 223; SDC 1939, §§ 28.0912, 28.9908; SDCL, § 31-32-8.

31-32-7. Destruction, etc., of highway grade or ditch--Violation as misdemeanor. No unauthorized person may injure any highway by removing, destroying, or otherwise altering the grade constructed for such highway or by filling, obstructing, or otherwise altering the ditch which drains the grade of such highway or otherwise injures such highway in any manner. A violation of this section is a Class 2 misdemeanor.

Source: SDC 1939, §§ 28.0912, 28.9908; SDCL, § 31-32-8; SL 1988, ch 235.

31-32-8. Civil liability for violating § 31-32-3.1, 31-32-6, or 31-32-7--Attorney fees. Any person violating the provisions of § 31-32-3.1, 31-32-6, or 31-32-7, in addition to the judgments authorized by those sections, shall also be liable in a civil action to the township, county, municipality, or other public corporation to which the highway, highway right-of-way, or bridge belonged, in the amount as may be recovered against the township, county, municipality, or other public corporation, including a reasonable amount for attorney's fees, on account of the injury or obstruction referred to in § 31-32-3.1, 31-32-6, or 31-32-7.

Source: SL 1917, ch 258, § 2; RC 1919, § 8588; SDC 1939, § 28.9908; SL 2017, ch 126, § 1.

In general, all encroachments should be removed from highway ROW. However, if removing an encroachment would cause a substantial hardship to the Landowner and the encroachment is not deemed as a safety concern to the traveling public, there are methods described in this document that may be followed.

The following process has been adapted by the Local Government Assistance office for local government projects from the SDDOT Encroachment Survey Guide.

Encroachment Survey Process

Conduct a survey and record details on an Encroachment Survey Form. Encroachment surveys should be completed a minimum of 4 months prior to the bid letting date. This will allow time to obtain county/city commission approval if necessary. A windshield survey is adequate if there is a ROW fence or other means to assist in identifying whether there are encroachments or not.

If there are encroachments, follow these steps:

- 1) Survey shall include documentation of recommended resolution along with pictures of each encroachment. Pictures shall have a description and location on each picture. All items within the ROW shall be noted.

Example Images



Pic. #51 (Broadway Ave.) Yankton
Sta. 19+80 Lt.
Law Offices encroaches 1.2'



Pic. #56 (Broadway Ave.) Yankton
Sta. 17+75 Lt.
Trinity Lutheran Church
encroaches 6.0'





2) Each item must be addressed as to how it is going to be resolved.

- a. * Landscaping and fencing items to remain by Permit to Occupy ROW.
- b. Items removed prior to construction.
- c. Items removed prior to end of construction.
- d. * Items permitted to remain for a specific time (i.e. 5 Years) by Permit to Occupy ROW.
- e. ** Items permitted to remain by Revocable Occupancy Agreement. These properties shall be identified as encroaching 0.5' or further into the ROW.
- f. * Notification to Landowner of an encroachment that is less than 0.5' within ROW.
- g. * Permits to Landowners of awnings and attached signs that meet encroachment criteria (i.e. > 3' from back of curb).

* Examples of the Permits to Occupy ROW, Notification to Landowner, and related form letters can be found at the end of this document.

** The Revocable Occupancy Agreement shall be recorded at the Register of Deeds. An example can be found at the end of this document.

3) Once copies of the applicable documents have been sent to the landowners, a time can be scheduled to present this information to the county/city commission for their approval.

Criteria for Encroachments

Where the highway passes through established business districts and the buildings are at the property line and are continuous or very closely spaced, encroachments overhanging the right-of-way will be prohibited except under the following conditions:

Allowable Encroachments:

a. **> 3' OK.** Awnings, canopies, marquees and similar installations on buildings shall be permitted to remain in place until such time that they become functionally or structurally obsolete, providing that the edge of such encroachment be not less three feet from the face of the curb.

b. **≤ 3' Need 14.5' Elevation.** Advertising or other similar signs that are less than or equal to three feet from the face of the curb and are supported wholly from the front of the building shall be permitted to remain in place until such time that they become functionally or structurally obsolete, providing that the bottom of such encroachment be not less than 14.5 feet above the curb elevation.

c. **> 3' and 8' Elevation.** The replacement of obsolete or the installation of new awnings, canopies, marquees, advertising signs or similar installations supported wholly from the building shall be permitted provided that no part of the encroachment is less than three feet from the face of the curb and 8 feet above the curb elevation.

d. In the event the encroachments referred to in (a), (b) and (c) above, by reason of color or placement, obscure or in any way detracts from the effectiveness of the highway signs, traffic signals, pedestrian safety, or interferes with the free or safe flow of the traffic, the county/city shall cause the removal of such encroachments or take appropriate measures to improve highway signs or traffic signals and traffic safety.

e. The provisions of paragraph (C) and subparagraphs (a), (b), (c) and (d) above shall not apply to isolated business or commercial buildings in outlying areas.

f. **“Grandfather Clause”.** In cases where there are encroachments of long standing which will in no way impair the highway operation or interfere with the free and safe flow of traffic and in the opinion of the county/city commission, the immediate removal would impose unreasonable hardship, the commission may at its discretion permit the encroachment to remain for a specific period. This permission is subject to revocation or extension at the commission's discretion. Each such encroachment shall be described in the Encroachment Survey Form.

See Chapter 7 – Appendix 1 for Example Encroachment Letters and Permits

Chapter 7 – Appendix 1

Example Encroachment Letters and Permits



ENCROACHMENT SURVEY CERTIFICATION
FOR
PROJECT, COUNTY, PCN

Conducted by _____

Title _____

Date _____

I hereby certify,

_____ No encroachments exist within the right-of-way limits of the noted project.

_____ The only existing encroachments within the right-of-way limits of the noted project are trees and/or _____ which will be removed as a part of the project.

_____ Features have been identified as being within the county's right-of-way. Letters have been sent to the landowners requiring the items be removed prior to DATE. This project is cleared for construction from an encroachment standpoint.

_____ An Encroachment Survey was completed for the referenced project and features have been identified as being within the county's right-of-way. These encroachments have been separated into several categories for action and will be handled as documented below.

DETAILS OF ENCROACHMENTS & HOW THEY WILL BE HANDLED

PHOTOS OF ENCROACHMENTS

COUNTY FORM – NO ENCROACHMENT

The Consultant shall produce this letter and send this letter to Government Assistance. This example letter can be copied and changed to reflect your project. LGA will send a copy of this letter to Connie Johnson in Project Development (cc: Brace Prouty & Sam Weisgram) stating there are no encroachments.

County

Address

City/Town, South Dakota 57

Phone #

Date, Year

Division of Planning & Engineering
Attention: NAME, LGA Project Manager
Department of Transportation
700 East Broadway Avenue
Pierre, South Dakota 57501-2586

Re: P 0001(01) PCN 0001; County
Asphalt Overlay from xxxx

An Encroachment Survey was completed for the referenced project. It has been determined there are no encroachments. This project is cleared for construction from an encroachment standpoint.

Please feel free to contact us if there are any questions.

Sincerely,

Engineer, Engineering Firm

Address

Cc: Area Engineer, Area
County Highway Superintendent

COUNTY FORM – ENCROACHMENT TO BE REMOVED

The Consultant shall produce this letter and send this letter to Local Government Assistance. This example letter can be copied and changed to reflect your project. LGA will send a copy of this letter to Connie Johnson in Project Development (cc: Brace Prouty & Sam Weisgram) stating there will be no encroachments.

County

Address

City/Town, South Dakota 57

Phone #

Date, Year

Division of Planning & Engineering
Attention: NAME, LGA Project Manager
Department of Transportation
700 East Broadway Avenue
Pierre, South Dakota 57501-2586

Re: P 0001(01) PCN 0001; County
Asphalt Overlay from xxxx

An Encroachment Survey was completed for the referenced project and XX have been identified as being within the counties right of way (ROW). Letters have been sent to the landowners requiring the XX be removed prior to DATE. This project is cleared for construction from an encroachment standpoint.

Please feel free to contact us if there are any questions.

Sincerely,

Engineer, Engineering Firm

Address

Cc: Area Engineer, Area
County Highway Superintendent

COUNTY FORM – ENCROACHMENT TO BE REMOVED

This letter shall be prepared by the consultant for the County. You can copy this letter and make appropriate changes to reflect your project. A photo must accompany this letter, see Encroachment Survey Guide for reference. The Highway Superintendent shall sign and send the letter to the landowner. LGA will file letter in project file.

Dear Mr. Brown;

A sign with the legend “Fontanelle” is encroaching in the Right-of-Way by 2 feet on the south side of SD Highway 50 on the east side of SD Highway 11. Federal Regulations require that this sign needs to be removed from the ROW in order to get our federal funding to construct the subject project.

Please move this sign out of the Right-of-Way by July 1, 2007, or County forces will remove it at the expense of the landowner and lay it outside of the ROW. A photo of the encroachment is enclosed.

If further information is needed, please contact me at (605)XXX-XXXX. Thank you in advance for your anticipated cooperation.

Sincerely,

Name
County Highway Superintendent

cc: NAME, LGA Project Manager

COUNTY FORM – ENCROACHMENT TO REMAIN 5 YEARS

The Consultant shall produce this letter and send this letter to Local Government Assistance. This example letter can be copied and changed to reflect your project. LGA will send a copy of this letter to FHWA. If it is approved then LGA will forward letter on to Connie Johnson with Project Development.

County

Address

City/Town, South Dakota 57

Phone #

Date, Year

Division of Planning & Engineering
Attention: LGA Project Manager
Department of Transportation
700 East Broadway Avenue
Pierre, South Dakota 57501-2586

Re: P 0001(01) PCN 0001; County
Asphalt Overlay from xxxx

An Encroachment Survey was completed for the referenced project and XX features have been identified as being within the counties right of way (ROW). During the Encroachment Survey, it has been determined these encroachments will not impair the highway or interfere with the free and safe flow of traffic. The following encroachments are permitted to remain by action of the County County Commission for a period of time which should not exceed 5 years after completion of the project or sooner if they become functionally obsolete for any reason, including storm damage.

These encroachments have been photographed and are documented in “Exhibit A”.

Please feel free to contact us if there are any questions.

Sincerely,

Engineer, Engineering Firm

Address

Attachment

Cc: Area Engineer, Area
County Highway Superintendent

COUNTY FORM – ENCROACHMENT TO REMAIN 5 YEARS

The Consultant shall produce this letter for the county, the County shall send letter to the landowner. The Consultant shall prepare a Permit To Occupy ROW Form, to accompany this letter.

County

Address

City/Town, South Dakota 57

Phone #

Date, Year

NAME

ADDRESS

CITY, STATE, ZIP

RE: Encroachment
P 0002(02), PCN 0002
AC Overlay Construction from

Dear (NAME):

As seen in the enclosed photo, your (DESCRIPTION) along County Road encroaches into the County Right-of-Way by (DISTANCE). The County will be reconstructing County Road during the next two years, and as part of the project, all encroachments must be addressed in order to secure project funding.

The (DESCRIPTION) that encroaches in the road right-of-way will be permitted to remain in place for a period not to exceed 5 years. If this (DESCRIPTION) requires replacement, upgrading or refurbishing for any reason, including storm damage within that 5 years, it must be removed from the roadway right-of-way at that time.

A Permit to Occupy Right-of-Way form is enclosed to allow this encroachment to temporarily remain. Please sign and date the Permit and return it to this office in the enclosed envelope. Thank you for your anticipated cooperation.

If you have questions, please contact me at (PHONE NUMBER).

Sincerely,

NAME

County County Highway Superintendent

cc: NAME, LGA Project Manager

COUNTY FORM – FENCE ENCROACHMENT TO REMAIN

The Consultant shall produce this letter and send this letter to Government Assistance. This example letter can be copied and changed to reflect your project. LGA will send a copy of this letter to FHWA. If it is approved then LGA will forward letter on to Connie Johnson with Project Development.

County

Address

City/Town, South Dakota 57

Phone #

Date, Year

Division of Planning & Engineering
Attention: NAME, LGA Project Manager
Department of Transportation
700 East Broadway Avenue
Pierre, South Dakota 57501-2586

Re: P 0001(01) PCN 0001; County
Asphalt Overlay from xxxx

An Encroachment Survey was completed for the referenced project and XX features have been identified as being within the counties right of way (ROW). These encroachments will be permitted by Permit To Occupy ROW Form. These encroachments have been photographed and are documented in “Exhibit A”.

Please feel free to contact us if there are any questions.

Sincerely,

Engineer, Engineering Firm
Address

Attachment

Cc: Area Engineer, Area
County Highway Superintendent

COUNTY FORM – FENCE ENCROACHMENT TO REMAIN

EXHIBIT "A"

Permits will be issued by [County](#) allowing the following encroachments to remain. The replacement, upgrading or refurbishing for any reason including storm damage of encroaching fence or other landscaping obstacles must be relocated/installed out of the Right-of-way. During the Encroachment Survey, it has been determined these encroachments will not impair the highway or interfere with the free and safe flow of traffic.

Pic#	Station	Description	Encroaches
6	Sta. 67+40 Rt.	Chain link fence	encroaches 0.8'
7	Sta. 69+60 Lt.	Wood fence	encroaches 7.4'
8	Sta. 68+60 Lt.	Wood fence	encroaches 1.9'
14	Sta. 60+30 Lt.	Wood fence	encroaches 2.0'
15	Sta. 61+30 Lt.	Wood fence	encroaches 4.8'

COUNTY FORM – FENCE ENCROACHMENT TO REMAIN

The Consultant shall produce this letter for the county, the County shall send letter to the landowner. The Consultant shall prepare a Permit To Occupy ROW Form, to accompany this letter.

County

Address

City/Town, South Dakota 57

Phone #

Date, Year

NAME

ADDRESS

CITY, STATE, ZIP

RE: Encroachment
P 0002(02), PCN 0002
AC Overlay Construction from

Dear (NAME):

As seen in the enclosed photo, your (DESCRIPTION) along County Road encroaches into the County Right-of-Way by (DISTANCE). The County will be reconstructing County Road during the next two years, and as part of the project, all encroachments must be addressed in order to secure project funding.

The (DESCRIPTION) that encroaches in the road right-of-way is considered to be a landscaping item, and does not need to be moved at this time. If this (DESCRIPTION) requires replacement, upgrading or refurbishing for any reason, including storm damage, it must be removed from the county right-of-way at that time.

A Permit to Occupy Right-of-Way form is enclosed to allow this encroachment to temporarily remain. Please sign and date the Permit and return it to this office in the enclosed envelope. Thank you for your anticipated cooperation.

If you have questions, please contact me at (PHONE NUMBER).

Sincerely,

NAME

County County Highway Superintendent

cc: NAME, LGA Project Manager

CITY LETTERHEAD

DATE

Division of Planning & Engineering
Attention: Doug Kinniburgh, LGA Program Manager
Department of Transportation
700 East Broadway Avenue
Pierre, South Dakota 57501-2586

Re: Project: ES 0ENH(189), PCN 02FR
City NAME
Shared Use Path (Main Street / Prairie Road / Willow Street)

An Encroachment Survey was completed for the referenced project and 2 ITEMS – LANDSCAPE – TREES/SHRUBBERY (VEGETATION) have been identified as being within the city’s right of way (ROW). These encroachments will not be permitted to remain (the trunk of the tree or a majority of the shrubbery is within city ROW). Letters have been sent to the landowners requiring the Vegetation be removed prior to 05/01/2010. These encroachments have been photographed and are documented in “Exhibit A”. This project is cleared for construction from an encroachment standpoint. Please feel free to contact us if there are any questions.

Sincerely,

NAME
Mayor, City NAME

Attachment

cc: Street Superintendent
City Council
Consultant
File

COUNTY FORM – LANDSCAPE ENCROACHMENT TO REMAIN

AGREEMENT BETWEEN THE POLITICAL SUBDIVISION AND THE STATE
FOR
FEDERAL AID HIGHWAY ENCROACHMENTS

EXHIBIT "A"

3. Large sign or other items on footings

The following encroachments are permitted to remain by action of the South Dakota Transportation Commission for a period of time which should not exceed 5 years after completion of the project as set forth in paragraph IV.1.C.f. or sooner if they become functionally obsolete for any reason, including storm damage. This permission will be in the form of a permit agreement issued by the DOT Area Office with each property owner and will be recorded as an encumbrance on the property. During the Encroachment Survey, it has been determined these encroachments will not impair the highway or interfere with the free and safe flow of traffic.

None

4. Landscaping – Vegetation/Shrubbery/Trees - Removal

The following encroachments will be removed from the right-of-way prior to construction: (Letters issued 10/31/2009)

1	Sta. 13+74 Lt. 20-1 SCHOOL DISTRICT P.O. BOX 260 CITY, SD 57625	Shrub	encroaches 6.8' - Remove
27	Sta. 19+70 Rt. CITY OF EAGLE BUTTE P.O. BOX 150 CITY, SD 57625	Tree/Branches	encroaches 34.8' - Remove

NAME
County County Highway Superintendent

cc: Doug Kinniburgh, LGA Program Manager

COUNTY FORM – LANDSCAPE ENCROACHMENT TO REMAIN

The Consultant shall produce this letter and send this letter to Local Government Assistance. This example letter can be copied and changed to reflect your project. LGA will send a copy of this letter to FHWA. If it is approved then LGA will forward letter on to Connie Johnson with Project Development.

County

Address

City/Town, South Dakota 57

Phone #

Date, Year

Division of Planning & Engineering
Attention: Doug Kinniburgh, LGA Program Manager
Department of Transportation
700 East Broadway Avenue
Pierre, South Dakota 57501-2586

Re: P 0001(01) PCN 0001; County
Asphalt Overlay from xxxx

An Encroachment Survey was completed for the referenced project and XX features have been identified as being within the counties right of way (ROW). Removal of the encroachment would cause substantial hardship to the Landowner and the encroachment is not deemed as a safety concern to the traveling public. These encroachments will be permitted by Permit To Occupy ROW Form. These encroachments have been photographed and are documented in “Exhibit A”.

Please feel free to contact us if there are any questions.

Sincerely,

Engineer, Engineering Firm
Address

Attachment

Cc: Area Engineer, Area
County Highway Superintendent

COUNTY FORM – LANDSCAPE ENCROACHMENT TO REMAIN

The Consultant shall produce this letter for the county, the County shall send letter to the landowner. The Consultant shall prepare a Permit To Occupy ROW Form, to accompany this letter.

County

Address

City/Town, South Dakota 57

Phone #

Date, Year

NAME

ADDRESS

CITY, STATE, ZIP

RE: Encroachment
P 0002(02), PCN 0002
AC Overlay Construction from

Dear (NAME):

As seen in the enclosed photo, your (DESCRIPTION) along County Road encroaches into the County Right-of-Way by (DISTANCE). The County will be reconstructing County Road during the next two years, and as part of the project, all encroachments must be addressed in order to secure project funding.

The (DESCRIPTION) that encroaches in the road right-of-way is considered to be a landscaping item, and does not need to be moved at this time. If this (DESCRIPTION) requires replacement, upgrading or refurbishing for any reason, including storm damage, it must be removed from the highway right-of-way at that time.

A Permit to Occupy Right-of-Way form is enclosed to allow this encroachment to temporarily remain. Please sign and date the Permit and return it to this office in the enclosed envelope. Thank you for your anticipated cooperation.

If you have questions, please contact me at (PHONE NUMBER).

Sincerely,

NAME

County County Highway Superintendent

cc: LGA Project Manager

COUNTY FORM – ENCROACHMENT TO REMAIN BY OCCUPY TO PERMIT
APPLICATION

The Consultant shall produce this letter and send this letter to Local Government Assistance. This example letter can be copied and changed to reflect your project. LGA will send a copy of this letter to FHWA. If it is approved then LGA will forward letter on to Connie Johnson with Project Development.

County

Address

City/Town, South Dakota 57

Phone #

Date, Year

Division of Planning & Engineering
Attention: **NAME**, LGA Project Manager
Department of Transportation
700 East Broadway Avenue
Pierre, South Dakota 57501-2586

Re: **P 0001(01) PCN 0001; County
Asphalt Overlay from xxxx**

An Encroachment Survey was completed for the referenced project and **XX** features have been identified as being within the counties right of way (ROW). During the Encroachment Survey, it has been determined these encroachments will not impair the highway or interfere with the free and safe flow of traffic. The following encroachments are permitted to remain by action of the **County** County Commission for a period of time which should not exceed 5 years after completion of the project or sooner if they become functionally obsolete for any reason, including storm damage.

These encroachments have been photographed and are documented in “Exhibit A”.

Please feel free to contact us if there are any questions.

Sincerely,

**Engineer, Engineering Firm
Address**

Attachment

Cc: **Area Engineer, Area
County Highway Superintendent**

COUNTY FORM – ENCROACHMENT TO REMAIN BY OCCUPY TO PERMIT
APPLICATION

The Consultant shall produce this letter for the county, the County shall send letter to the landowner. The Consultant shall prepare a Permit To Occupy ROW Form, to accompany this letter.

County

Address

City/Town, South Dakota 57

Phone #

Date, Year

NAME
ADDRESS
CITY, STATE, ZIP

RE: Encroachment
P 0002(02), PCN 0002
AC Overlay Construction from

Dear (NAME):

As seen in the enclosed photo, your (DESCRIPTION) along County Road encroaches into the County Right-of-Way by (DISTANCE). The County will be reconstructing County Road during the next two years, and as part of the project, all encroachments must be addressed in order to secure project funding.

The (DESCRIPTION) that encroaches in the road right-of-way will be permitted to remain in place for a period not to exceed 5 years. If this (DESCRIPTION) requires replacement, upgrading or refurbishing for any reason, including storm damage within that 5 years, it must be removed from the roadway right-of-way at that time.

A Permit to Occupy Right-of-Way form is enclosed to allow this encroachment to temporarily remain. Please sign and date the Permit and return it to this office in the enclosed envelope. Thank you for your anticipated cooperation.

If you have questions, please contact me at (PHONE NUMBER).

Sincerely,

NAME
County Highway Superintendent

cc: NAME, LGA Project Manager

COUNTY FORM – FENCE WITHIN ROW, PERMIT TO OCCUPY APPLICATION

APPLICATION FOR PERMIT TO OCCUPY RIGHT-OF-WAY : ENCROACHMENT

Roadway No. County Project No. PCN

City/Town Legal Description

Description of Encroachment: _____

I, the undersigned, request permission to occupy public right-of-way at the above location and as shown on the attached photo. In consideration for this permission, I agree to abide by all conditions as herein stated.

1. To furnish all materials, labor, incidentals and pay all costs involved with this occupancy including restoration of any damage to the roadway and right-of-way to equal or better conditions than existed prior to the occupancy covered by this permit.
2. To provide protection to roadway traffic during occupancy by the use of proper signs, barricades, flag persons and lights as prescribed in the "Manual of Uniform Traffic Control Devices."
3. To indemnify, hold and save harmless the State of South Dakota, its Department of Transportation and County, their Officers and Employees, from any and all suits, actions or claims of any kind or nature brought because of any injuries or damage received or sustained by any person or property on account of the use or occupancy of right right-of-way designated in this application.
4. To move said encroachment out of the Right-of-Way when it becomes structurally or functionally obsolete, or requires replacement, upgrading or refurbishing for any reason, including storm damage.

SIGNATURE DATE

ADDRESS TELEPHONE

REPRESENTING

(Name of Landowner, Organization, etc.)

COUNTY FORM – FENCE WITHIN ROW, PERMIT TO OCCUPY APPLICATION

To be completed by the County

Station _____ Milepost _____ Photo Number _____

1. Special Conditions _____

2. Failure to accomplish the occupancy in accordance with the provisions of this permit will automatically render this permit null and void and where applicable, constitute grounds for its removal and/or full restoration of the occupancy site all at the applicant's expense.

This permit to occupy right-of-way is granted to all conditions as herein stated on this day of _____

_____, 20____ . _____

County Highway Superintendent

COUNTY FORM – PERMIT TO OCCUPY APPLICATION

APPLICATION FOR PERMIT TO OCCUPY RIGHT-OF-WAY : ENCROACHMENT

Roadway No. County Project No. PCN

City/Town Legal Description

Description of Encroachment:

I, the undersigned, request permission to occupy public right-of-way at the above location and as shown on the attached photo. In consideration for this permission, I agree to abide by all conditions as herein stated.

- 1. To furnish all materials, labor, incidentals and pay all costs involved with this occupancy including restoration of any damage to the roadway and right-of-way to equal or better conditions than existed prior to the occupancy covered by this permit.
2. To provide protection to roadway traffic during occupancy by the use of proper signs, barricades, flag persons and lights as prescribed in the "Manual of Uniform Traffic Control Devices."
3. To indemnify, hold and save harmless the State of South Dakota, its Department of Transportation and County, their Officers and Employees, from any and all suits, actions or claims of any kind or nature brought because of any injuries or damage received or sustained by any person or property on account of the use or occupancy of right right-of-way designated in this application.
4. To move said encroachment out of the Right-of-Way when it becomes structurally or functionally obsolete, or requires replacement, upgrading or refurbishing for any reason, including storm damage.
5. The replacement of obsolete or the installation of new awnings, canopies, marquees, advertising signs or similar installations supported wholly from the building shall be permitted provided that no part of the encroachment is less than 3 feet back from the face of the curb and 8 feet above the curb elevation.
6. In the event the encroachment, by reason of color or placement, obscures or in any way detracts from the effectiveness of the highway signs, traffic signals, pedestrian safety, or interferes with the free or safe flow of the traffic, the City shall cause the removal of such encroachment or take appropriate measures to improve highway signs or traffic signals and traffic safety.

SIGNATURE DATE

ADDRESS TELEPHONE

REPRESENTING

(Name of Individual, Company, Organization, etc.)

COUNTY FORM – PERMIT TO OCCUPY APPLICATION

To be completed by the County

Station _____ Milepost _____ Photo Number _____

1. Special Conditions _____

2. Failure to accomplish the occupancy in accordance with the provisions of this permit will automatically render this permit null and void and where applicable, constitute grounds for its removal and/or full restoration of the occupancy site all at the applicant's expense.

This permit to occupy right-of-way is granted to all conditions as herein stated on this day of _____, 20____.

County Highway Superintendent

CITY FORM – PERMIT TO OCCUPY APPLICATION

APPLICATION FOR PERMIT TO OCCUPY RIGHT-OF-WAY : ENCROACHMENT

Roadway No. County Project No. PCN

City/Town Legal Description

Description of Encroachment: _____

I, the undersigned, request permission to occupy public right-of-way at the above location and as shown on the attached photo. In consideration for this permission, I agree to abide by all conditions as herein stated.

1. To furnish all materials, labor, incidentals and pay all costs involved with this occupancy including restoration of any damage to the roadway and right-of-way to equal or better conditions than existed prior to the occupancy covered by this permit.
2. To provide protection to roadway traffic during occupancy by the use of proper signs, barricades, flag persons and lights as prescribed in the "Manual of Uniform Traffic Control Devices."
3. To indemnify, hold and save harmless the State of South Dakota, its Department of Transportation and City of CITY, their Officers and Employees, from any and all suits, actions or claims of any kind or nature brought because of any injuries or damage received or sustained by any person or property on account of the use or occupancy of right right-of-way designated in this application.
4. To move said encroachment out of the Right-of-Way when it becomes structurally or functionally obsolete, or requires replacement, upgrading or refurbishing for any reason, including storm damage.
5. The replacement of obsolete or the installation of new awnings, canopies, marquees, advertising signs or similar installations supported wholly from the building shall be permitted provided that no part of the encroachment is less than 3 feet back from the face of the curb and 8 feet above the curb elevation.
6. In the event the encroachment, by reason of color or placement, obscures or in any way detracts from the effectiveness of the highway signs, traffic signals, pedestrian safety, or interferes with the free or safe flow of the traffic, the City shall cause the removal of such encroachment or take appropriate measures to improve highway signs or traffic signals and traffic safety.

SIGNATURE

DATE

ADDRESS

TELEPHONE

REPRESENTING

(Name of Individual, Company, Organization, etc.)

CITY FORM – PERMIT TO OCCUPY APPLICATION

To be completed by the City

Station _____ Milepost _____ Photo Number _____

1. Special Conditions _____

2. Failure to accomplish the occupancy in accordance with the provisions of this permit will automatically render this permit null and void and where applicable, constitute grounds for its removal and/or full restoration of the occupancy site all at the applicant's expense.

This permit to occupy right-of-way is granted to all conditions as herein stated on this day of _____, 20____.

City

COUNTY FORM – PERMANENT ENCROACHMENT TO REMAIN BY
REVOCABLE OCCUPANCY AGREEMENT

County

Address

City/Town, South Dakota 57

Phone #

Date, Year

Division of Planning & Engineering
Attention: **NAME**, LGA Project Manager
Department of Transportation
700 East Broadway Avenue
Pierre, South Dakota 57501-2586

Re: **P 0001(01) PCN 0001; County**
Asphalt Overlay from xxxx

An Encroachment Survey was completed for the referenced project and **XX** features have been identified as being within the counties right of way (ROW). Removal of the encroachment would cause substantial hardship to the Landowner and the encroachment is not deemed as a safety concern to the traveling public. These encroachments will be permitted by Permit To Occupy ROW Form. These encroachments have been photographed and are documented in “Exhibit A”.

Please feel free to contact us if there are any questions.

Sincerely,

Engineer, Engineering Firm
Address

Attachment

Cc: **Area Engineer, Area**
County Highway Superintendent

The Consultant shall produce this letter for the county, the County shall send letter to the landowner. The Consultant shall prepare a Permit To Occupy ROW Form, to accompany this letter.

COUNTY FORM – PERMANENT ENCROACHMENT TO REMAIN BY
REVOCABLE OCCUPANCY AGREEMENT

County

Address

City/Town, South Dakota 57

Phone #

Date, Year

NAME
ADDRESS
CITY, STATE, ZIP

RE: Encroachment
P 0002(02), PCN 0002
AC Overlay Construction from

Dear (NAME):

As seen in the enclosed photo, your (DESCRIPTION) along County Road encroaches into the County Right-of-Way by (DISTANCE). The County will be reconstructing County Road during the next two years, and as part of the project, all encroachments must be addressed in order to secure project funding.

The (DESCRIPTION) that encroaches in the road right-of-way is considered to be a landscaping item, and does not need to be moved at this time. If this (DESCRIPTION) requires replacement, upgrading or refurbishing for any reason, including storm damage, it must be removed from the highway right-of-way at that time.

A Permit to Occupy Right-of-Way form is enclosed to allow this encroachment to temporarily remain. Please sign and date the Permit and return it to this office in the enclosed envelope. Thank you for your anticipated cooperation.

If you have questions, please contact me at (PHONE NUMBER).

Sincerely,

NAME
County County Highway Superintendent

cc: NAME, LGA Project Manager

Revocable Occupancy Agreement Letter (Group 5)

CITY LETTERHEAD

DATE

NAME
ADDRESS
CITY, STATE, ZIP

RE: Encroachment
P-PH 2050(01)408, PCN 6469
Reconstruction of SD 50 Loop (Cherry Street) in Vermillion

Dear (NAME):

As seen in the enclosed photo, your (DESCRIPTION) in Vermillion encroaches into the SD 50 Loop, Cherry Street Right-of-Way by (DISTANCE). The SD Department of Transportation will be reconstructing Cherry Street during the next two years, and as part of the project, all encroachments must be addressed in order to secure project funding.

The (DESCRIPTION) that encroaches in the highway right-of-way will be allowed to remain in place by Permit. A Revocable Occupancy Permit will be prepared and recorded with the Register of Deeds by the Department of Transportation.

A draft of the Revocable Occupancy Permit is enclosed. The DOT will send you a copy of the signed permit when signatures are obtained and approval is granted.

If you have questions, please contact me at (PHONE NUMBER).

Sincerely,

CITY OF VERMILLION

NAME
TITLE

cc: SDDOT

REVOCABLE OCCUPANCY AGREEMENT

**COUNTY OF SOUTH DAKOTA
REVOCABLE OCCUPANCY
AGREEMENT
OF PUBLIC RIGHT OF WAY**

This agreement made and entered into this ____ day of _____, 20__, by and between the _____ County of South Dakota (hereinafter referred to as "County"), and OWNER NAME, of address ADDRESS, CITY, STATE, ZIP, (hereinafter referred to as "Owner"), for construction of Federal Aid Project PROJECT NUMBER, PCN #####, and

WHEREAS, the County, acting through the _____ County Commission, has agreed to prohibit encroachments for construction of Federal Aid highway projects, and

WHEREAS, a certain encroachment exists in the way of a structure on the existing right of way of the above mentioned project without the agreement or approval of County, said encroachment is known as ENCROACHMENT DESCRIPTION (for example - building encroaching 13.5'), and

WHEREAS, Owner is the owner of such an existing encroachment, as shown on the attached survey photo, on the right of way along COUNTY ROAD NUMBER OR 911 ROAD NUMBER on property the legal description of which is:

LEGAL DESCRIPTION

WHEREAS, Owner desires to continue such encroachment on the right of way along COUNTY ROAD NUMBER OR 911 ROAD NUMBER at the above-described location, and

WHEREAS, County desires to allow such encroachment to continue on the right of way along COUNTY ROAD NUMBER OR 911 ROAD NUMBER.

NOW THEREFORE, in consideration of the above, the parties hereby agree as follows:

1. County agrees that Owner shall be allowed to maintain the above-referenced encroachment on COUNTY ROAD NUMBER OR 911 ROAD NUMBER right-of-way for as long as said encroachment continues to be maintained and used as a part of the adjoining property, subject to the following:

If the described encroachment ceases to be used, is damaged or destroyed from any cause whatsoever not attributable to the County to the extent that repair costs would exceed fifty percent (50%) of the fair market value of the encroachment at the time of its damage or destruction, or if all or a portion of the encroachment is removed by Owner, then such encroachment may not be repaired, re-erected or replaced anywhere within the existing highway right-of-way.

REVOCABLE OCCUPANCY AGREEMENT

2. If the elimination of the encroachment for future highway purposes becomes necessary, Owner agrees to immediately implement and promptly follow through on all necessary steps to relocate or remove the encroachment in a timely manner upon receipt of written notice from County. Owner shall not be entitled to receive just compensation and/or relocation benefits in the event removal or relocation of the encroachment becomes necessary for future highway purposes, provided, however, that if the removal or relocation is in connection with a taking of portions of Owner's property beyond the encroachment, then just compensation and/or relocation benefits shall be available as though no encroachment exists.

3. Owner shall indemnify, hold and save harmless County and its officers and employees, from any and all suits, actions or claims of any kind or nature brought because of any injuries or damage received or sustained by any person or property on account of the use or occupancy of the highway right of way as designated in this agreement.

Dated this ____ day of _____, 20__.

By: _____
Owner(s)

APPROVED AS TO FORM:

_____ County, South Dakota

State's Attorney

By: _____
Commission Chairman

REVOCABLE OCCUPANCY AGREEMENT

ACKNOWLEDGMENTS

STATE OF SOUTH DAKOTA)

: SS

COUNTY OF _____)

On this ___ day of _____, 20__, before me, a Notary Public, personally appeared _____, known to me to be the Chairman of the _____ County Commission and acknowledged to me that she executed the foregoing document as such person and in such capacity therein stated and for the purposes therein contained.

NOTARY PUBLIC

My Commission Expires:

(SEAL)

STATE OF SOUTH DAKOTA)

: SS

COUNTY OF _____)

On this ___ day of _____, 20__, before me, a Notary Public, personally appeared _____ known to me to be or satisfactorily proven to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she did sign the foregoing document for the purposes therein contained.

NOTARY PUBLIC

My Commission Expires:

(SEAL)