

Inst # 1999-05027

02/04/1999-05027  
11:25 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
005 WMS 18.50

Loc. 401:245

### RIGHT-OF-WAY ENCROACHMENT AND PERMISSIVE USE AGREEMENT

This agreement ("Agreement") is made on the 17<sup>th</sup> day of December, 1998, by COLONIAL PIPELINE COMPANY ("COLONIAL"), a Delaware corporation, and CITY OF PELHAM, ALABAMA ("OWNER").

WHEREAS, COLONIAL owns and operates two 36" pipelines across property under Right of Way Easement ("Right of Way") granted to COLONIAL by instrument dated October 19, 1962, recorded in Deed Book 222, Pages 826 and 827 and instrument dated July 6, 1971, recorded in Deed Book 208, pages 811 and 812 of Register's Office for Shelby County, Alabama.

WHEREAS, the location of the Right-of-Way is generally depicted on drawings by Municipal Consultants, Inc. as dated April, 1998, entitled Interceptor Sewer, I-65 & County Road No. 52 ("Drawings"), which drawings by reference, are made a part hereof; and

WHEREAS, the Right-of-Way crosses a parcel (or parcels) of land upon which OWNER proposes to construct a 24" interceptor sewer line as shown on the referenced Drawings; and

WHEREAS, a portion of the proposed improvements will encroach on the Right-of-Way, as depicted on the Drawings; and

WHEREAS, COLONIAL approves the encroachment as described on the referenced drawings, provided that COLONIAL'S ability to exercise the rights granted by the Right of Way Easements are not impaired by said encroachment and conditions as per attached "Exhibit A"; and

NOW, THEREFORE, IN CONSIDERATION OF \$1.00 and other good and valuable considerations, COLONIAL and OWNER agree as follows:

COLONIAL hereby allows the encroachment and permits certain use to be made of its Right-of-Way in that portion of the Right-of-Way above referenced and as shown on the Drawings depicting the proposed improvements.

COLONIAL hereby authorizes OWNER, its successors, purchasers, and assigns, to install and maintain those improvements that will encroach upon the portions of the Right-of-Way which are delineated hereby, subject to the conditions of this AGREEMENT being FURTHER defined herein, to wit;

OWNER shall not interfere with COLONIAL'S access to the Right-of-Way for the purposes of inspection, maintenance, and repairs of its pipelines or for any other reason as provided under the terms

of the Easements. COLONIAL has the right at all times to inspect its pipelines to determine whether maintenance and/or repairs are needed.

COLONIAL shall not be responsible regarding any damages to OWNER'S improvements within the Right-of-Way limits, except those improvements specifically provided for in this Agreement; they are defined and conditioned as follows:

1. OWNER shall notify Jim Durrett, (phone 205/663-7282) at least two (2) COLONIAL working days prior to construction, subsequent maintenance or repair so that COLONIAL may provide a representative at the site. If he cannot be reached, then notify Mickey Elliott, (phone 404/792-8530).
2. No mechanized ditching or excavation shall be allowed within five (5) feet of either side of the extremities of the pipelines. No excavation or construction is permitted over COLONIAL'S pipelines or within its Right-of-Way without a COLONIAL representative being present. Sub-grading, grading and placement of fill over the pipelines will require the approval of COLONIAL'S field representative as to method and extent. Stockpiling of spoilage or topsoil over the pipelines is not permitted, unless otherwise approved by COLONIAL'S representative.
3. Right-of-Way will be kept clear of equipment, vehicles and material at all times except as may be temporarily authorized by COLONIAL'S representative.
4. Permanent structures are not permitted on the Right-of-Way, except as expressly permitted herein. Manholes, junction boxes, valve boxes, fire hydrants, service meters, storm drain inlets, and utility poles are considered permanent structures. The impoundment of water over the pipeline Right-of-Way is not allowed. No fences or temporary structures (such as signs, trailers, temporary power poles, etc.) shall be allowed in the Rights-of-Way without the express approval of COLONIAL'S representative.
5. Upon request by the encroaching party, landowner or their agents, COLONIAL will determine the approximate location of its pipelines and Right-of-Way; however, in so doing, COLONIAL makes no warranty as to the accuracy of the locations and measurements given. COLONIAL also cannot provide assurance that its permanent line markers are positioned directly over its pipelines. (See 10. E, F)
6. Pipeline markers made unusable or damaged shall be repaired or replaced at the encroaching party's expense. In addition, no pipeline markers shall be obscured from public view.
7. The encroaching party agrees that all work within COLONIAL'S Right-of-Way shall be performed in a workmanlike manner and in compliance with applicable government and industry standards and codes.
8. This approval is granted only to the extent of, and with no actual or implied diminishment of, COLONIAL'S rights and interests, and without either express or implied warranty.
9. It is understood and agreed that Colonial shall not be liable in any way for any injury to the person or property of any third person, or corporation arising out of the installation, maintenance, or repair of OWNER'S works, with the exception of claims due to the negligence of COLONIAL and/or its contractors, subcontractors, employees and agents.
10. All of the following conditions shall apply:
  - A. Parallel occupancy of foreign utilities shall not be permitted within COLONIAL'S Easements, except as permitted herein.
  - B. Foreign utilities, installed by OWNER, crossing COLONIAL'S Rights-of-Way shall be installed a minimum of 2'-0" above or below COLONIAL'S pipelines, and this elevation must be maintained for the entire width of the Easements. The crossing shall be at as near a 90-degree angle as possible.

- C. Ductile iron or steel foreign utility crossings do not require encasement. Other utility crossings shall be encased in steel or concrete.
- D. The encroaching party acknowledges that COLONIAL'S pipelines have impressed electrical current for the protection of the steel. Any loss of this protection caused by the encroaching party will be corrected by COLONIAL personnel only. The cost to correct this damage will be paid by the encroaching party.
- E. If the approximate location of the pipelines is required, steel prod bars, shovels and electrical sensing devices may be used by COLONIAL'S field personnel. It should be noted that these methods are only approximate and can be misleading. The exact location of the pipelines can best be found through test pitting.
- F. If test pitting is required at any time to determine the exact location and elevation of the pipeline, Caution: notify Jim Durrett (per Item 1) so that a COLONIAL representative may be provided at the site. This representative must be present during the test pitting for the protection of the pipeline and common verification of its location. All costs for this test pitting will be borne by the encroaching party. The cost of engineering based on COLONIAL or other design criteria stemming from the amount or location of this test pit data is the responsibility of the encroaching party.
- G. COLONIAL reserves the right to open-cut, excavate and dig across all proposed roads, including paving, curbs, and sidewalks; but COLONIAL shall use reasonable care to prevent damage to OWNER'S lines. COLONIAL will also give reasonable advance notification to OWNER prior to any repairs or maintenance in the immediate area of OWNER'S lines by COLONIAL, its agents, servants, subcontractors, or employees; and in either such event, COLONIAL shall not be liable for the restoration of same or the payment of any damages to the encroaching party.
- H. Excavation or grading which might result in erosion or which could render COLONIAL'S Right-of-Way inaccessible shall not be permitted unless the encroaching party agrees to restore the area and provide protection to COLONIAL'S pipelines and Right-of-Way. Erosion control measures within or protecting the Right-of-Way including diversion dikes, sediment traps, silt fences, gravel outlets, and emergency spillways requires approval of COLONIAL'S field representative as to equipment and method of installation.
- I. Heavy equipment shall not be permitted to operate over the pipelines unless earth padding has been provided to protect the pipelines from vibrating, overloading or physical damage. Temporary equipment crossings over the pipelines are permitted at selected locations as approved by COLONIAL'S field representative. Light to medium weight equipment will require five (5) vertical feet of cover over the pipeline(s), and heavy equipment will require six (6) vertical feet of cover. Colored strips of plastic shall be placed under the temporary fill at original grade so that original grade will not be disturbed when the temporary fill is removed.
- J. Original vegetation on COLONIAL'S Rights-of-Way shall not be disturbed except in areas of the above mentioned construction and approved equipment crossings. High visibility plastic fence or other approved barricade shall be installed and maintained by the encroaching party along the edge COLONIAL'S Rights-of-Way within the limits of the project to insure that traffic does not randomly travel over COLONIAL'S pipeline.
- K. Burning or burying of trash, brush, debris, shall not be permitted within COLONIAL'S Right-of-Way.
- L. Cover above the pipelines shall not be altered without approval of COLONIAL'S representative. Minimum cover from top of pipelines to finished surface shall not be less than 4.5 feet under roadways, parking areas and driveways.
- M. Subsurface installation of equipment is prohibited unless specifically approved in writing by a COLONIAL representative.



Upon failure of the encroaching party, OWNER or his (their) agents to comply with any of the terms of this Agreement, COLONIAL reserves the right to revoke this Agreement in its entirety, prevent same from continuing any activity in violation of the terms of this Agreement or its rights under its Easements and prior agreements and make any necessary repairs or adjustments to its pipelines or Right-of-Way with its own forces and/or contractor at the expense of the party requesting the encroachment, provided however, that OWNER shall have been given notification of, and reasonable time to correct, such violation(s) without being deemed to be in default of this Agreement.

This Agreement shall be recorded in Shelby County, Alabama by COLONIAL, shall run with the land and be binding upon the heirs, successors and assigns of the parties hereto.

As evidence of this agreement the parties hereto have executed this document on the date first recited above.

COLONIAL PIPELINE COMPANY

By: [Signature]  
District Project Leader

WITNESS:

[Signature]

ATTEST:

[Signature] (Seal)

(STATE OF GEORGIA)

Fulton COUNTY

I, the undersigned Notary Public in and for said County, in said State, hereby certify that John F. Godfrey, whose name as Dis. Proj. Ldr. of COLONIAL PIPELINE COMPANY, a Delaware corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day as same bears date.

Given under my hand and official seal, this 17<sup>th</sup> day of December, 1998.

[Signature]  
Notary Public

My Commission Expires:

Notary Public Clayton County Georgia  
My Commission Expires January 1, 2002

CITY OF PELHAM, ALABAMA

Mayor

(Title)

WITNESS:

By: [Signature]  
(Authorized Representative)

(STATE OF ALABAMA)

Shelby COUNTY

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Bobby Hayes, whose name as Mayor of CITY OF PELHAM, ALABAMA is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, He as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day as same bears date.

Given under my hand and official seal, this 23 day of November, 1998.

[Signature]  
Notary Public

My Commission Expires:

MY COMMISSION EXPIRES OCTOBER 30, 2000

02/04/1999-05027  
11:25 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
005 HHS 18.50