



GENERATING UTILITY WATER & SEWER AGREEMENTS



UTILITIES UNIT



Utility Construction Facts for Utility Owners

What is a Utility Construction Agreement, Use & Occupancy Agreement or Engineering Agreement?

The Utility Construction Agreement is a legally binding contract between the North Carolina Department of Transportation and a Utility Owner (Governmental Agency, Utility Company or Owner) that authorizes NCDOT's contractor to relocate the utility owner's facilities that are in conflict with the proposed highway project. The agreement may include, but is not limited to, scope of work, utility construction relocation plans and provisions. This agreement applies to utility owners responsible for the relocation expenses. The estimated cost and repayment term(s) of the utility work will be included within the terms of the agreement.

The Use & Occupancy Agreement is a document between the North Carolina Department of Transportation and a Utility Owner (Governmental Agency, Utility Company or owner) that authorizes NCDOT's contractor to relocate the utility owner's facilities in conflict with the proposed highway project. This agreement applies to a utility owner who will NOT be responsible for relocation costs because; (1) owner has a valid easement for the existing facilities or (2) the cost responsibility is defined under General Statute 136-27.1 or 136-27.2.

The Utility Engineering Agreement is a legally binding contract between the North Carolina Department of Transportation and a Utility Owner (Governmental Agency, Utility Company or Owner) that authorizes NCDOT to design the water and sewer relocation plans at the owner's request. This agreement applies to utility owners responsible for the relocation expenses. The estimated cost and repayment term(s) of the utility work will be included within the terms of the agreement.

How does NCDOT determine responsibility for the relocation cost?

If you are the owner or representative of a utility located within the Right of Way of a highway scheduled for improvements, you are responsible for arranging the relocation of the utility under the provisions of the NCDOT Right of Way Encroachment Agreement. As part of this agreement, you or the utility owner previously agreed to promptly remove or alter the facilities without any cost to NCDOT.

Should the utility owner prove prior easement rights within our project limits either by recorded right of way or adverse possession (utility occupying the same location for twenty (20) plus years outside the existing high rights of way) or utility owner is covered under General Statute 136-27.1 or 136-27.2, then the NCDOT will pay the non-betterment relocation cost. Whether you are arranging this relocation yourself or

whether you wish for NCDOT to handle this work, you will need to fulfill the steps required by NCDOT to help aid in the prompt and cost-efficient relocation of the utility.

General Statute 136-18(10), gives the Department the authority to order the removal or adjustment of utilities on the State System right of way.

Can I develop my own utility construction relocation plans to be included in the highway contract?

Yes. The utility owner can elect to engineer or outsource the development of their own utility construction relocation plans. To keep the project on schedule, the plans, estimates and all pertinent information as requested by the NCDOT would need to be forwarded to the NCDOT State Utility Agent eight (8) months prior to the project let date. The NCDOT would then prepare the Utility Construction Agreement or Use & Occupancy Agreement for review and approval by the utility owner.

If NCDOT is participating in the cost to engineering construction plans outsourced by the utility owner, the NCDOT Utilities Unit and NCDOT Consultant, Utility and Turnpike Unit (CURT) will need to review and approve the engineering firms current indirect cost rate. In addition, the firm will need to provide an itemized cost estimate with man-hours, job classification with names of employees and pay rates and fee.

Can a utility owner do their own work?

Yes. The utility owner may handle the relocation of their facilities either with their own resources or by contract after the approval by NCDOT of the utility construction relocation plans. In fact, NCDOT strongly encourages the utility owner to handle this work. When utility owners relocate their facilities, this work is able to begin in advance of the highway project let date. As with all highway projects, NCDOT's goal is to relocate all the utility conflicts prior to this date, thus aiding in the completion of the scheduled highway improvement. While a Utility Construction Agreement will not be needed for this option, you are required to notify the Office of the State Utility Agent in writing that you plan to handle this work.





I Prefer that NCDOT handle the relocation of my utilities, what are the next steps?

1. During the development phase of the highway project, a representative from the NCDOT Utilities Unit will contact you to set up a utility coordination meeting to discuss scheduling dates, phasing of construction and potential conflicts with the owner's facilities. This meeting is usually held 18 to 36 months prior to the highway project let date. A sample agreement (Utility Construction Agreement or Use and Occupancy Agreement) will be provided by NCDOT for the utility owner's review and comments. Should the owner be responsible for the relocation cost, a sample of our repayment terms will be provided for the owner's review and comments.
2. As the utility owner or representative, you will need to formally request that NCDOT include the utility relocation work in the highway contract. This request must be made in writing to the NCDOT State Utility Agent. As part of the request, the owner must agree to the terms of the sample agreement; in writing, prior to the NCDOT agreeing to place the work within the highway contract. Should the utility owner not agree to the terms, then the owner will be responsible to relocate its conflicting facilities prior to the project let date. In addition, if utility owner is responsible for the relocation expenses and request that the NCDOT design the relocation plans,
3. After the written request is received by the State Utility Agent, a second meeting will be scheduled with the utility owner's representative(s) and the NCDOT Utilities Unit Engineer and Coordinator. All pertinent information regarding the

existing utilities within the project limits should be provided at this meeting to better assist the NCDOT Utility Engineer for design purposes. If the utility owner wishes to upgrade the existing facilities, this desire should be included in the written request to make the utility relocation part of the highway contract. For all new installations, the utility owner will be required to develop their own utility construction plans. For municipalities not covered under General Statutes 136-27.1 or cannot provide proof of a valid R/W: Twelve months prior to the project let date, the NCDOT will provide a rough estimated cost to relocate the conflicting utilities as part of the Municipal Agreement. This estimate can be used for budgeting purposes to allocate future funds for reimbursement back to the NCDOT. The Municipal Agreement is a legally binding contract between the NCDOT and the Municipality that details the roles and responsibility of each party and monetary compensation. This agreement is separate from the Utility Construction Agreement and is developed by the DOT Transportation Program Management Unit and is usually sent to the Mayor or Manager of the Municipality for review and approval.

4. Approximately 5 months prior to the project let date, the Utility Construction Agreement or Use & Occupancy Agreement and all pertinent attachments (engineering plans and estimate) will be sent to the utility owner for review and timely approval.
5. The approved Utility Construction Agreement or Use & Occupancy Agreement must be returned to the NCDOT State Utility Agent 2 months prior to highway project let date. If not approved as directed and returned as submitted to the NCDOT within 2 months; the highway project let date will be delayed.
6. After final execution and approval by the NCDOT Board, one original signed copy will be forwarded back to the Governmental Agency and/or Utility Owner.

What are the terms for reimbursement back to the NCDOT?

Reimbursement terms for relocation work in the highway contract are based on the estimated cost for the utility installations and/or adjustments. The NCDOT Accounts Receivable Unit will bill the Governmental Agency and/or Utility Company after completion of the highway project and reimbursement will be due within sixty (60) days after date of invoice. Under the terms of G.S. 136-27.3, interest shall be paid on any unpaid balance at a variable rate of prime plus one percent (1%). The prime rate for each agreement will be set based on the prime rate of the day the agreement is approved by the NCDOT Board of Transportation. The reimbursement cost will be based on the established contract prices and actual quantities used to complete the utility installations and/or adjustments. Based on the time frames for developing the utility construction plans, it allows ample time for the utility owner to budget for the future project. In rare cases, the reimbursement cost is lump-sum based on the estimated cost for the utility installations.

Reimbursement terms for NCDOT to develop the water and sewer relocation plans are based on actual cost as agreed upon between the Department, Agency and Department's consultant. Billing by the Department will take place upon completion of relocation plans and approval of plans by the agency. Reimbursement shall be made by the Agency in one final payment sixty (60) days of said invoice.

Thank you for working with the N.C. Department of Transportation in the relocation of encroaching utilities. Together, we can help aid in the smooth and timely delivery of a scheduled transportation improvement project in your area.



Who do I contact for more information?

For information on the Utility Agreement the contacts are as follows:

Eastern Region: David Boyd (919) 707-7170 or dboyd@ncdot.gov
Central Region: Ed Reams, Jr. (919) 707-6995 or ereams@ncdot.gov
Western Region: Amy Dupree (919) 707-6996 or agdupree@ncdot.gov

Connect to NCDOT Utilities Unit at:

<https://connect.ncdot.gov/municipalities/Utilities/Pages/UtilitiesManuals.aspx>

