

**AGREEMENT OVERVIEW**

NORTH CAROLINA  
[ ] COUNTY

DATE: [m/d/yyyy]

**PARTIES TO THE AGREEMENT:**

**PROJECT NUMBERS:**

NORTH CAROLINA DEPARTMENT  
OF TRANSPORTATION

TIP #: [ ]

AND

WBS ELEMENTS: [ ]

[OTHER PARTY NAME]

FUNDING WBS: [ ]

The purpose of this Agreement is to identify the participation in project costs, project delivery and/or maintenance, by the other party to this Agreement, as further defined in this Agreement.

**SCOPE OF PROJECT (“Project”):** [ENTER SCOPE OF THE AGREEMENT]

**ESTIMATED COSTS TO OTHER PARTY:** \$[ ]

**PAYMENT TERMS:** *[Option A:]* [Other Party Name] will submit payment upon execution of agreement.*[Option B:]* The Department will invoice the [Other Party Name] upon completion of the Project.

**EFFECTIVE DATES OF AGREEMENT:**

**START:** Upon Full Execution of this Agreement

**END:** When work is complete and all terms are met.

This **Agreement** is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the **Department** and the [Other Party Name], hereinafter referred to as the **Municipality**; and collectively referred to as the **Parties**.

The **Parties** to this Agreement, listed above, intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement, represents the entire understanding between the **Parties** with respect to its subject matter and supersedes any previous communication or agreements that may exist.

**I. WHEREAS STATEMENTS**

**WHEREAS**, this Agreement is made under the authority granted to the **Department** by the North Carolina General Assembly under General Statutes of North Carolina (NCGS), particularly Chapter 136-27.1 and 136 27.3; and,

**WHEREAS**, the **Department** has plans to make certain street and highway constructions and/or traffic control improvements; and,

**WHEREAS**, the **Municipality** has requested that the **Department** perform work or provide services; and,

**WHEREAS**, the **Parties** hereto wish to enter into an agreement for scoped work to be performed or provided by the **Department** (including construction, reviews, goods, or services) with reimbursement for the costs thereof by the **Municipality** as hereinafter set out; and,

**WHEREAS**, the **Department** and the **Municipality** have agreed that the jurisdictional limits of the **Parties**, as of the date of entering the agreement for the above-mentioned project, are to be used in determining the duties, responsibilities, rights, and legal obligations of the **Parties** hereto for the purposes of this Agreement; and,

**NOW, THEREFORE**, this Agreement states the promises and undertakings of each party as herein provided, and the **Parties** do hereby covenant and agree, each with the other, as follows:

**II. RESPONSIBILITIES**

- i. The **Department** shall be responsible for all phases of project delivery to include planning and design as shown in the **PROJECT DELIVERY** Provision.
- ii. The **Municipality** shall be responsible for payment as shown in the **COSTS AND FUNDING** Provision

**III. PROJECT DELIVERY REQUIREMENTS**

**A. PRELIMINARY ENGINEERING**

- i. At the request of the **Municipality**, the **Department** will provide design services for the required relocation and/or betterment of the **Municipality's** utility lines as affected by Project [TIP #]. The work is described as follows: [ (purpose of this Agreement) ].
- ii. The **Department** will ensure the design of municipal utility relocation is performed by professional engineering services. If the **Department** revises highway plans, then the **Municipality** reserves the right to re-engineer relocation plans.



- iii. Upon the satisfactory completion of the utility construction plans covered under this Agreement, the **Municipality** shall review and approve the plans, the associated estimated utility construction cost, and special provisions to be made part of the **Department's** roadway contract for highway construction. The **Municipality** shall release the **Department** of any future responsibility for the design of the utility construction plans. Said releases shall be deemed to be given by the **Municipality** upon completion of the plans, estimate, special provisions and acceptance by the **Department** and **Municipality** for the plans to be made part of the highway contract.
- iv. The **Municipality** agrees to enter into a separate agreement for the **Department** to place provisions in the highway construction agreement for the highway contractor to adjust and relocate the utilities based on the plans, provisions and utility construction estimate as provided by the **Department's** utility consultant.
- v. The **Municipality** agrees to approve and submit back to the **Department** for final execution the Utility Construction Agreement (UCA) a minimum of three months prior to the **Department's** project let date or the **Municipality** agrees to relocate their facilities prior to two months after the **Department's** project let date.

#### IV. COSTS AND FUNDING

##### A. PROJECT COSTS

- i. The **Municipality** shall be responsible for the design for the relocation, and/or betterment, costs for work as shown on the attached Exhibit "A". The estimated cost to the **Municipality** is \$[ ] as shown on the attached Exhibit "B".
- ii. It is understood by both the **Department** and the **Municipality** that this is a final cost unless the **Municipality** requests additional work not covered under this agreement, or plan review by the **Department** and/or **Municipality** does not properly identify all existing conflicts, or **Department** revises highway plans before or during construction. Under this agreement, the **Municipality** reserves the right to re-engineer plans due to the **Department's** plan revisions.
- iii. Upon the satisfactory completion of the utility construction plans covered under this Agreement, the **Municipality** shall review and approve the plans, the associated estimated utility construction cost and special provisions to be made part of the **Department's** roadway contract for highway construction, and the **Municipality** shall release the **Department** of any future responsibility for the design of the utility construction plans. Said releases shall be deemed to be given by the **Municipality** upon completion of the plans, estimate, special provisions and acceptance by the **Department** and **Municipality** for the plans to be made part of the highway roadway contract.

##### B. *[Option A:]* PAYMENT BY THE MUNICIPALITY

- i. [USE WHEN DOWNPAYMENT IS NEEDED AT TIME AGREEMENT IS EXECUTED] Based on the estimated cost of \$[ ] the **Municipality** shall submit payment for \$[ ] to the **Department's** Fiscal Section upon full execution of this Agreement in accordance with the attached "Remittance Guidance".
- ii. [USE WHEN DOWN PAYMENT IS NEEDED PRIOR TO CON PHASE] The **Municipality** shall provide a down payment prior to the **Department** initiating the construction phase. The **Department** will notify the **Municipality** of the requested amount of down payment. The **Municipality** shall remit payment, in accordance with the attached "Remittance Guidance".
- iii. Upon completion of the Project, if actual costs exceed the amount of the down payment, the **Municipality** shall reimburse the **Department** any underpayment within sixty (60) days of invoicing by the **Department**. The **Department** will charge a late payment penalty and interest on any unpaid balance due in accordance with G. S. 147-86.23. If the actual cost of the work is less than \$[ ], the **Department** will reimburse the **Municipality** any overpayment.

**B. [Option B:] PAYMENT BY THE MUNICIPALITY**

- i. Upon completion of the Project, the **Department** will calculate actual costs and bill the **Municipality** per **Project Costs** Provision. The **Municipality** shall reimburse the **Department** within sixty (60) days of invoicing by the **Department**. The **Department** will charge a late payment penalty and interest on any unpaid balance due in accordance with G. S. 147-86.23.
- ii. At any time prior to final billing by the **Department**, the **Municipality** may prepay any portion of the estimated cost by sending payment in accordance with the attached "Remittance Guidance". The **Department** will provide a final billing based on the fixed cost, less any previous payments that have been made.
- iii. In the event the **Municipality** fails for any reason to pay the **Department** in accordance with the provisions for payment hereinabove provided, North Carolina General Statute 136-41.3 authorizes the **Department** to withhold so much of the **Municipality's** share of funds allocated to said **Municipality** by North Carolina General Statute, Section 136-41.1, until such time as the **Department** has received payment in full.

**V. STANDARD PROVISIONS**

**A. AGREEMENT MODIFICATIONS**

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all **Parties** by means of a written Supplemental Agreement.



**B. ASSIGNMENT OF RESPONSIBILITIES**

The **Department** must approve any assignment or transfer of the responsibilities of the **Municipality** set forth in this Agreement to other parties or entities.

**C. AGREEMENT FOR IDENTIFIED PARTIES ONLY**

This Agreement is solely for the benefit of the identified **Parties** to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

**D. OTHER AGREEMENTS**

The **Municipality** is solely responsible for all agreements, contracts, and work orders entered into or issued by the **Municipality** to meet the terms of this Agreement. The **Department** is not responsible for any expenses or obligations incurred for the terms of this Agreement except those specifically eligible for the funds and obligations as approved by the **Department** under the terms of this Agreement.

**E. TITLE VI**

The other party to this Agreement shall comply with Title VI of the Civil Rights Act of 1964 (Title 49 CFR, Subtitle A, Part 21) and related nondiscrimination authorities. Title VI and related authorities prohibit discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

**F. FACSIMILE**

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the **Parties** agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

**G. AUTHORIZATION TO EXECUTE**

The **Parties** hereby acknowledge that the individual executing this Agreement has read this Agreement, conferred with legal counsel, fully understands its contents, and is authorized to execute this Agreement and to bind the respective **Parties** to the terms contained herein.

**H. DEBARMENT POLICY**

It is the policy of the **Department** not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the **Municipality** certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

**I. INDEMNIFICATION**

To the extent authorized by state and federal claims statutes, the **Municipality** shall be responsible for its actions under the terms of this agreement and save harmless the FHWA (if applicable), the **Department**, and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns to the extent allowed by law, from and against any and all claim for payment, damages and/or liabilities of any nature, asserted against the **Department** in connection with this Agreement. The **Department** shall not be liable and shall be held harmless from any and all third-party claims that might arise on account of the **Municipality's** negligence and/or responsibilities under the terms of this agreement.

**J. AVAILABILITY OF FUNDS**

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

**K. DOCUSIGN**

The **Department** and **Municipality** acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the **Department** or the **Municipality**, to execute this Agreement. By selecting "I Agree", "I Accept", or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, the **Department** and **Municipality** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes **Department's** signature as if actually signed by the **Department** in writing or the **Municipality's** signature as if actually signed by the **Municipality** in writing. The **Department** and **Municipality** also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. The **Department** and **Municipality** acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

**L. GIFT BAN**

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Adult Corrections, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).