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**UTILITY PRELIMINARY ENGINEERING AGREEMENT (PAYABLE)**

**WBS ELEMENT:** \_\_\_\_\_

**TRANSPORTATION IMPROVEMENT PROGRAM NO.:** \_\_\_\_\_

**COUNTY:** \_\_\_\_\_

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This agreement made this \_\_\_\_\_ day of \_\_\_\_\_, by and

between the Department of Transportation, an agency of the State of North

Carolina, hereinafter referred to as the DEPARTMENT, and \_\_\_\_\_

\_\_\_\_\_ hereinafter referred to as the COMPANY:

**WITNESSETH:**

**THAT WHEREAS, the DEPARTMENT will submit a project for construction as follows:**

known as route \_\_\_\_\_ in \_\_\_\_\_ County, North Carolina to be designated as N.C. State Highway Project and/or WBS Element \_\_\_\_\_ and,

**WHEREAS, the construction of said project will require certain engineering of plans for adjustments to be made to the existing facilities of the COMPANY;**

**NOW, THEREFORE, in order to facilitate the orderly and expeditious relocation of the said facilities of COMPANY, the DEPARTMENT and the COMPANY have agreed as follows:**

**1. That the DEPARTMENT has agreed to reimburse the COMPANY for preliminary engineering charges associated with certain adjustments to be made to the existing facilities of the COMPANY.**

**2. That any work performed under this agreement shall comply with DEPARTMENT's "UTILITIES ACCOMMODATION MANUAL" dated July, 2022, and such amendments thereto as may be in effect at the date of this agreement. The work to be performed by the COMPANY shall conform with Federal Highway Administration's Federal-Aid Policy Guide, Subchapter G, Part 645, Subpart A hereinafter referred to as FAPG dated December 9, 1991, and such amendments**

thereto as may be in effect at the date of this agreement. The provisions of said FAPG and amendments thereto are incorporated in this agreement by reference as fully as if herein set out. Any work performed under this agreement not in compliance with FAPG shall constitute unauthorized work and the DEPARTMENT shall be relieved of participating in the costs of such unauthorized work unless such work is done pursuant to a supplemental agreement attached to and made a part hereof.

3. That the COMPANY or COMPANY Engineering firm will prepare an estimate, broken down as to estimated cost of preliminary engineering, overhead rate, job classification pay rate, indirect cost rates, cost of capital rate and estimated man-day hours all in sufficient detail to provide the DEPARTMENT a reasonable basis for analysis. The before mentioned estimate is attached hereto and made a part hereof. The DEPARTMENT will not reimburse the COMPANY for any preliminary engineering not necessitated by the construction of the highway project, nor for changes made solely for the benefit or convenience of the COMPANY.

4. That payment for all work done hereunder shall be made in accordance with the requirements of FAPG unless payment is being made pursuant to a supplemental agreement attached to and made a part of this agreement.

5. That the preliminary engineering work provided for in this agreement will be performed by the method or methods as specified below:

BY COMPANY'S REGULAR FORCE: The COMPANY proposes to use its regular personnel at its standard schedule of wages and working hours in accordance with the terms of its agreement with such employees.

BY EXISTING WRITTEN CONTINUING CONTRACT: The COMPANY proposes to use an existing written continuing contract under which certain work as shown by the COMPANY's estimate is regularly performed for the COMPANY and under which the lowest available costs are developed. The COMPANY shall submit a copy of the continuing contract (including rates) to the DEPARTMENT for review and approval.

BY CONTRACT: The COMPANY does not have adequate staff to perform the necessary engineering design with its own forces. The COMPANY submits to DEPARTMENT a draft advertisement for review and approval, and in accordance with NC General Statute 143-64.31 and 23 CFR 172, will select firms qualified to provide such service on the basis of demonstrated competence and qualification for the type of professional services and to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm. The COMPANY shall submit overhead rates to the DEPARTMENT for review and approval in accordance with DEPARTMENT audit requirements. Refer to DEPARTMENT requirements at the following site:

<https://connect.ncdot.gov/projects/Roadway/Private%20Engineering%20Firm%20Resources/NC DOT%20Audit%20Requirements%20Fiscal%20Form.pdf>

6. a. It is contemplated by the parties hereto that the construction of this State Highway Project will begin on or about the \_\_\_\_\_

b. Based on the best information available at the present time to the COMPANY, indicate applicable paragraph below:

Preliminary Engineering will be complete allowing adequate time for materials and completion of certain adjustments prior to highway construction.

Preliminary Engineering will be complete prior to highway construction; however, certain adjustments are not expected to be complete prior to highway construction.

Other (Specify)

7. Indicate if (a) or (b) is applicable:

a.  That preliminary engineering is for the adjustments of existing facilities in conflict with said project.

b.  That the preliminary engineering involves COMPANY's request for new facilities in addition to adjustments of existing facilities in conflict with said project.

8. That the total estimated cost of the preliminary engineering proposed herein, including all cost to the DEPARTMENT and COMPANY, is estimated to be----- \$ \_\_\_\_\_

The estimated preliminary engineering cost to the DEPARTMENT, including all cost less any preliminary engineering for new facilities requested by the COMPANY.----- \$ \_\_\_\_\_

The estimated cost to the COMPANY for any additional preliminary engineering charges for new facilities requested by the COMPANY will be----- \$ \_\_\_\_\_

*(The above costs shall be supported by attached estimate)*

9. That in the event it is determined there are changes in the scope of work, extra work, or major changes from the statement of work covered by this agreement, reimbursement shall be limited to costs covered by a modification of this agreement or a written change or extra work order approved by the DEPARTMENT.

10. Periodic progress billings of incurred costs may be made by COMPANY to the DEPARTMENT not to exceed monthly intervals; however, total progress billing payments shall not exceed 95% of the approved non-betterment estimate. Progress billing forms may be obtained from the Area Utility Agent. One final and detailed complete billing of all costs shall be made by COMPANY to the DEPARTMENT at the earliest practicable date after completion of work and in any event within 6 months after completion of work. The statement of final billing shall

follow as closely as possible the order of the items in the estimate portion of this agreement.

11. That the DEPARTMENT shall have the right to inspect all books, records, accounts and other documents of the COMPANY pertaining to the work performed by it under this agreement at any time after work begins and for a period of 3 years from the date final payment has been received by the COMPANY.

12. That in the future, the DEPARTMENT submits a project for construction to be designated with a different NC State Highway Project number and/or WBS element than stated in this agreement and it becomes necessary due to highway construction or improvement to adjust or relocate utilities covered under this agreement, the DEPARTMENT does not obligate itself to participate in future payments for preliminary engineering.

IN WITNESS WHEREOF, the parties hereby have affixed their names by their duly authorized officers the day and year first above written.

DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST OR WITNESS

\_\_\_\_\_  
(NAME OF COMPANY)

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.