

MEMORANDUM OF AGREEMENT

**NORTH CAROLINA DEPARTMENT OF NATURAL AND CULTURAL RESOURCES
AND
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION**

CONTRACT NUMBER 2781

THIS MEMORANDUM OF AGREEMENT is hereby made between the North Carolina Department of Natural and Cultural Resources, 109 East Jones Street, Raleigh, NC, 27601-1023, with an invoice mailing address of 4605 Mail Service Center, Raleigh, NC 27699-4605, (hereinafter “**DNCR**”), and the North Carolina Department of Transportation, , NC 14623-5604 (hereinafter “**DOT**” and together with “**DNCR**”, the “**Parties**”). The Terms “Agreement” and “Contract” are used interchangeably to refer to this Memorandum of Agreement.

WITNESSETH

WHEREAS, the North Carolina Highway Historical Marker Program (hereinafter “**Marker Program**”) was established by the NC General Assembly in 1935 (Public Laws, Chapter 197) as a joint venture between the NC Office of History (now **DNCR**) and the North Carolina Department of Highways (now **DOT**).

WHEREAS, each Marker Program Highway Historical Marker (hereinafter “**NCHH Marker**”) is to commemorate individuals and events of statewide historical importance (07NCAC 04T.0104).

WHEREAS, prior to 2020, DNCR hosted the NC Highway Historical Marker Advisory Committee (hereinafter “**Advisory Committee**”), received applications for proposed NCHH Markers, and conducted necessary historical research to allow the Advisory Committee to approve/reject proposed NCHH Markers.

WHEREAS, prior to 2020, DOT was responsible for ordering, purchasing, and installing the NCHH Markers approved by the Advisory Committee.

WHEREAS, in the 2021 Session, the North Carolina General Assembly (hereinafter “**NCGA**”) amended General Statute 136-42.3 (Session Law 2021-180 §41.56) to require DOT to transfer the annual amount set by the NC General Assembly (\$100,000.00 starting with FY2022) from DOT highway maintenance funds to DNCR “for the purchase of historical markers.”

WHEREAS, the amended General Statute 136-42.3 permanently transfers funding and responsibility for ordering and purchasing NCHH Markers from DOT to DNCR.

WHEREAS, DOT retains responsibility for installing NCHH Markers.

THEREFORE, DNCR and DOT do mutually agree and contract as follows to formalize the transfer of DOT funds to DNCR as specified in the amended G.S. 136-42.3:

1. **Time of Performance**: The effective date of this Agreement is upon final signature of the Parties and shall continue until terminated by action of the NCGA.
2. **Time of Essence**: Time is of the essence in performing all activities regarding this Agreement.

3. **Scope of Services:**

DNCR shall:

- A. Annually provide to DOT an invoice in the amount specified by the NC General Assembly (\$100,000.00 starting with FY2022).
- B. Allocate the transferred funds specified in this Agreement solely to the Marker Program to purchase (1) new and replacement NCHH Markers, (2) repair services for damaged NCHH Markers, (3) new and replacement posts for NCHH Markers, and (4) repair kits for NCHH Markers.
- C. Direct delivery of new, replacement, and repaired NCHH Markers, new and replacement posts, and repair kits to appropriate DOT facilities across the State for installation, reinstallation, and repair of NCHH Markers.

DOT shall:

- A. Transfer the invoiced amount to DNCR Electronic Vendor Number 566062189 Group 10 within thirty (30) days of receipt of the annual invoice from DNCR.
- B. Install new, replacement, and repaired NCHH Markers and new and replacement NCHH Marker posts.

4. **Payment Terms:** Payment terms are not later than thirty (30) days after receipt of correct invoice from DNCR.

5. **Availability of Funds:** All terms and conditions of this Agreement are dependent upon and subject to the allocation of funds for the purposes set forth and the Agreement shall automatically terminate if funds cease to be available.

6. **Agreement Administrators:** The Agreement Administrators are as follow:

**DNCR Agreement Administrator:
For All Day-To-Day Activities Described in Scope of Services**

Ramona Bartos

Division Director, Division of Historical Resources
Historical Research Office
North Carolina Office of Archives and History
North Carolina Department of Natural and Cultural Resources

Office Address: 109 E. Jones Street
Raleigh, NC 27601-1023

Mailing Address: 4617 Mail Service Center
Raleigh, NC 27699-4617

Telephone: 919-814-6583
Email: ramona.bartos@ncdcr.gov

DNCR Agreement Administrator: For Contract Issues

Cynthia Armes

Director of Procurement
North Carolina Department of Natural and Cultural Resources

Office Address: 109 E. Jones Street
Raleigh, NC 27601-1023

Mailing Address: 4605 Mail Service Center
Raleigh, NC 27699-4605

Telephone: 919-814-6728
Email: cynthia.ames@ncdcr.gov

DOT Agreement Administrator

Brian Mayhew

State Traffic Engineer
North Carolina Department of Transportation

Office Address: 750 N. Greenfield Parkway
Garner, NC 27529-6949

Mailing Address: 1561 Mail Service Center
Raleigh, NC 27699-1561

Telephone: 919-814-5100

Email: bmayhew@ncdot.gov

7. **Governing Law:** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
8. **Situs:** The place of this Agreement, in situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
9. **Force Majeure:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, pandemic, epidemic, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
10. **Access to Persons and Records:** The North Carolina State Auditor and the using agency's internal auditors shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7 and Session Law 2010-194, Section 21 (i.e., the State Auditors and internal auditors may audit the records of the DOT of the contract to verify accounts and data affecting fees or performance). The DOT shall retain all records for a period of three (3) years following completion of the contract.
11. **Assignment:** This Agreement or any interest therein shall not be assigned or transferred by either DOT or DNCR.
12. **Amendments:** This Contract shall not be amended orally or by performance, but only by written amendments duly executed by the DNCR and the DOT.
13. **Entire Agreement:** This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
14. **Sovereign Immunity:** Notwithstanding any other term or provision in The Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to a State under applicable law.
15. **Contract Documents:** The Contract shall consist of the following documents in order of precedence:
 - (a) Amendments to this Contract, if any;
 - (b) This Contract;

In the event of a conflict between or among the terms of the Contract Documents, the term in the Contract Document with the highest precedence shall prevail. Amendments to the

Contract (if any) shall have the highest precedence, the Contract shall have the second highest precedence, and the DOT's Exhibits shall have the third highest precedence and Attachments the fourth highest precedence. These documents shall constitute the entire agreement between the parties and supersede all other prior oral or written statements or agreements.

Signature page follows.

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SIGNATURE PAGE

IN WITNESS WHEREOF, DOT and DNCR have each executed this Agreement.

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

DocuSigned by:
J. R. Hopkins
 _____ 09/27/2022
 J. Eric Boyette/Joey Hopkins, PE Date
 Secretary/Chief Operating Officer

APPROVED BY BOARD OF TRANSPORTATION ITEM O: May 5, 2022 (DATE)

NORTH CAROLINA DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

DocuSigned by:
Dr. Dawn Waters
 _____ 09/27/2022
 Dr. Dawn Waters Date
 Deputy Secretary, Office of Archives & History

**APPROVED FOR RECEIPT OF FUNDS
4601 438115 1210121**

DocuSigned by:
Joshua Davis
 _____ 09/23/2022
 Joshua Davis Date
 Chief Financial Officer

APPROVED FOR CONTRACT

DocuSigned by:
Cynthia Armes
 _____ 09/23/2022
 Cynthia Armes Date
 Director of Procurement

NORTH CAROLINA DEPARTMENT OF ADMINISTRATION

DocuSigned by:

Mark Edwards

09/27/2022

Mark Edwards
Deputy Secretary

Date