

MEMORANDUM OF AGREEMENT
For In-Contract Utility Relocation
City of Myrtle Beach
Water Line Relocation
Fred Nash Blvd in Horry County
SCDOT Project ID P031788

This Agreement is made this ____ day of _____, 20____ by and between the South Carolina Department of Transportation (hereinafter referred to as "**COUNTY**") and the _____ (hereinafter referred to as "**UTILITY**") (collectively "the Parties") to ensure the successful completion of the public water and/or sewer facilities relocation for the below described Project:

This document is to serve as a Memorandum of Agreement as to the specific responsibilities of **UTILITY** and **COUNTY** in completing this Project and associated Utility Work.

Section I – Definitions

1. The term "Project" shall refer to **COUNTY**'s Project along _____ in _____ County.
2. The term "Utility Work" shall refer to an adjustment necessitated by **COUNTY**'s Project of a public water system or public sewer system facility by removing and reinstalling the facility; a move, rearrangement, or change of the type of existing facilities; necessary safety and protective measures; or the construction of a replacement facility that is both functionally equivalent to, but not including any betterment of, the existing facility that is necessary for the continuous operation of the system's service.

Section II - Agreements by the Parties

1. The Utility Work shall be included in **COUNTY**'s contract for the construction of the Project.
2. The Utility Work shall be performed by a contractor approved by **UTILITY** and licensed and qualified to perform the Utility Work. **COUNTY**'s contractor will select the contractor to perform the Utility Work from **UTILITY**'s list of preferred contractors. In the event the preferred contractors are not available, **COUNTY** will obtain written concurrence from **UTILITY** regarding the contractor selected to perform the utility work.

Section III - Funding

1. **COUNTY** shall be responsible for the cost of utility relocations where prior rights exist in accordance with SCDOT's "A Policy for Accommodating Utilities on Highway Rights of Way" and 23 CFR 645A. Additionally, pursuant to SC Code § 57-5-880, **COUNTY** shall bear all of the relocation costs, including design costs, up to four percent of the original construction bid

amount of the Project. Since more than one large public water utility or large public sewer utility will be required to relocate due to the Project, the total cost share of up to four percent will be divided pro rata among the large public water or large public sewer utilities required to relocate.

2. **UTILITY** is responsible for the cost of any betterments.
3. **COUNTY** estimates the original construction bid amount to be \$13,237,754.58. Four percent of this estimate is \$529,510.18, which is the maximum amount **COUNTY** will contribute to non-prior rights Utility Work. This amount shall be divided pro rata among 2 large public water or sewer utilities. The pro ration shall be based on the estimates provided by all eligible large public water or sewer utilities with Utility Work associated with the Project.
4. **UTILITY** estimates the total cost of the Utility Work to be \$3,041,980.00, with such costs to be allocated as follows:
 - a. **COUNTY's** share is estimated at \$1,875,884.29. This consists of:
 - i. **Prior Rights** estimated at \$1,660,532.50
 - ii. Pro-rated share (40.67%) of total **Non-Prior Rights** estimated at \$215,351.79
 - b. **UTILITY's** share is estimated at \$1,166,095.71
5. In accordance with its procurement practices and procedures, **COUNTY** will solicit bids for the construction of the Project, including the Utility Work, and will award the **COUNTY** contract to the contractor with the lowest qualified bid for the overall work of the Project.
6. **COUNTY** shall notify **UTILITY** in writing as to the cost of the Utility Work included in the awarded **COUNTY** contract.
7. **COUNTY's** share identified in 4.a. above shall be the maximum amount payable by **COUNTY** for the Utility Work. Any amount over this shall be the responsibility of **UTILITY**.
8. If the Utility Work contains any betterments, work that is not an eligible cost under SC Code § 57-5-880, or if the cost exceeds **COUNTY's** maximum contribution, **COUNTY** will invoice **UTILITY** for that amount. **UTILITY** shall remit the invoiced amount to **COUNTY** within 30 days of receipt of the invoice. Any payment due must be received by **COUNTY** prior to execution of the construction contract.
9. Should Utility Work change orders be needed, **COUNTY** reserves the right to approve change orders that are less than 10% of the bid price and to approve change orders that would result in the total cost of Utility Work remaining less than the estimated cost indicated in this Agreement.

Section IV – COUNTY's Responsibilities

1. Include the Utility Work in **COUNTY's** contract for the construction of the Project.
2. **COUNTY** will provide **COUNTY's** contractor with all documents provided to **COUNTY** by **UTILITY**.
3. Allow **UTILITY** or **UTILITY's** Consulting Engineer and/or Inspector full access to the site when the Utility Work is underway.

Section V – UTILITY's Responsibilities

1. Apply for and receive all necessary permits (including Construction Permit Application Water/Wastewater Facilities through DHEC) for the Utility Work. The cost of these permits shall be reimbursable by **COUNTY** according to the terms of this Agreement.
2. Provide all engineering design services, sealed construction plans and specifications, bid tab sheet, itemized estimated cost, and a list of preferred contractors (minimum of 3) to meet **COUNTY's** letting schedule for the Project. These costs shall be reimbursable by **COUNTY** according to the terms of this Agreement.
3. If construction plans and specifications provided by **UTILITY** are found to be inaccurate due to errors or omissions, **UTILITY** shall be responsible for any resulting damages, including delay damages and the costs attributable to such delays.
4. **UTILITY** must meet the bidding and construction schedule established by **COUNTY**. All documents necessary must be provided by **UTILITY** to **COUNTY** at least 180 days prior to receipt of bids for the Project. If the Project is under an accelerated schedule, **COUNTY** shall notify **UTILITY** of the date by which the documents must be provided.
5. Failure to meet the bidding and construction schedule requirements shall result in **UTILITY** having to bear all relocation costs.

Section VI – General Conditions

1. **COUNTY** shall have final approval on the location of all **UTILITY's** facilities within **COUNTY** right-of-way.
2. All work covered under this Agreement and performed by **COUNTY's** contractor shall be performed within **COUNTY** right-of-way.
3. Upon **UTILITY's** acceptance of the Utility Work, or any specific portion thereof, in accordance with the plans and specifications, **UTILITY** will assume sole and complete responsibility for the new facility. For purposes of this Agreement, **UTILITY** will be considered to have accepted the Utility Work, or any specific portion thereof, by assuming control of the Utility Work and commencing to utilize it.
4. Following acceptance, **UTILITY** will have sole responsibility for the operation and maintenance of the Utility Work and sole liability for any claims made by third-parties that arise from the design, construction, operation, or maintenance of the Utility Work in its entirety or the portion that has been accepted.
5. Following acceptance, **UTILITY** assumes any and all liability for accidents or injuries to persons, or damage to property (including the highway) that may be caused by the maintenance, use, moving, or removing of the water and/or sewer line and related appurtenances constituting the Utility Work as described herein.
6. Prior rights will remain in locations where prior rights currently exist. This Agreement shall not grant prior rights in locations where they do not currently exist.
7. Where **UTILITY** is on **COUNTY** right-of-way by encroachment, **UTILITY** agrees that if, in the opinion of **COUNTY's** Deputy Secretary of Engineering, it should ever become necessary to move or remove the Utility Work, including any future modifications thereto, on account of the change in locations of the highway, widening of the highway, or for any other sufficient reason, such moving or removing shall be done on demand of **COUNTY** at **UTILITY's** expense.

8. **UTILITY** shall agree to hold consultations with **COUNTY** as may be necessary with regard to the execution of supplements to this Agreement during the course of the Project for the purpose of resolving any items that may have been unintentionally omitted from this Agreement. Such supplemental agreements shall be subject to the approval and proper execution of the Parties hereto. No amendment to this Agreement shall be effective or binding on any Party hereto unless such amendment has been agreed to in writing by all Parties hereto.

Section VII – Counterparts

This Agreement may be executed in counterparts, and if so executed, shall become effective when a counterpart has been executed and delivered by both Parties hereto. All counterparts taken together shall constitute one and the same Agreement and shall be fully enforceable as such. Delivery of counterparts via facsimile transmission or via email with scanned attachment shall be effective as if originals thereof were delivered.

[Signature blocks on next page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and sealed by their authorized representatives.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

CITY OF MYRTLE BEACH

WITNESS

BY: _____

Title: _____

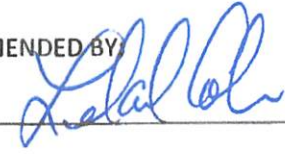
HORRY COUNTY

WITNESS

BY: _____

Title: _____

RECOMMENDED BY:

HAB 

Deputy Secretary for Engineering or Designee

REVIEWED BY:



State Utilities Engineer