Attachment A

NORTH CAROLINA

DURHAM COUNTY

UTILITY AGREEMENT

DATE: 03/24/2014

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

AND

WBS Elements: 41731

CITY OF DURHAM

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 City of Durham, hereinafter referred to as the "Municipality";

W I T N E S S E T H:

WHEREAS, the Department has prepared and adopted plans to make certain street and highway improvements under WBS Element 41731, in Durham County, said plans consists of constructing a Roundabout at the intersection of Herndon Road and Barbee Road/Massey Chapel Road in Durham County; said project having a right-of-way width as shown on the project plans on file with the Department's office in Raleigh, North Carolina; and,

WHEREAS, the parties hereto wish to enter into an agreement for certain utility work to be performed by the Department's construction contractor with full reimbursement by the Municipality for the costs thereof as hereinafter set out.

NOW, THEREFORE, it is agreed as follows:

1. The Department shall place provisions in the construction contract for this Project in Durham County, for the contractor to adjust and relocate water lines. Said work shall be accomplished in accordance with the Department's utility construction plans and special provisions as approved by the Municipality's public works department

2. The Municipality shall be responsible for water lines cost as shown on the attached Exhibit "A". The estimated cost to the Municipality is $155,000 as shown on the attached Exhibit "A". It is understood by both parties that this is an estimated cost and is subject to change. The Municipality shall reimburse the Department for said costs as follows:

A. Upon completion of the highway work, the Department shall submit an itemized invoice to the Municipality for cost incurred. Billing will be based upon the actual bid prices and actual quantities used.

B. Reimbursement shall be made by the Municipality in one final payment within sixty (60) days of said invoice.

C. If the Municipality does not pay said invoice within sixty (60) days of the date of the invoice, the Department shall charge interest on any unpaid balance at a variable rate of the prime plus (1%) in accordance with G.S. 136-27.3.

D. Said interest rate shall be set upon final execution of the Agreement by the Department. The Municipality will be notified of the set interest rate by the Department's approval letter upon receipt of the fully executed agreement.

E. Any cost incurred due to additional utility work requested by the Municipality after award of the construction contract, shall be solely the responsibility of the Municipality. The Municipality shall reimburse the Department 100% of the additional utility cost.

3. 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.

4. Upon the satisfactory completion of the relocations and adjustments of the utility lines covered under this Agreement, the Municipality shall assume normal maintenance operations to the said utility lines. Upon completion of the construction of the highway project, the Municipality shall release the Department from any and all claims for damages in connection with adjustments made to its utility lines; and, further, the Municipality shall release the Department of any future responsibility for the cost of maintenance to said utility lines. Said releases shall be deemed to be given by the Municipality upon completion of construction of the project and its acceptance by

the Department from its contractor unless the Municipality notifies the Department, in writing, to the contrary prior to the Department's acceptance of the project.

5. It is further agreed that the following provisions shall apply regarding the utilities covered in this Agreement.

   A. The Municipality obligates itself to service and to maintain its facilities to be retained and installed over and along the highway within the Department's right-of-way limits in accordance with the mandate of the North Carolina General Statutes and such other laws, rules, and regulations as have been or may be validly enacted or adopted, now or hereafter.

   B. If at any time the Department shall require the removal of or changes in the location of the encroaching facilities which are being relocated at the Municipality's expense, the Municipality binds itself, its successors and assigns, to promptly remove or alter said facilities, in order to conform to the said requirement (if applicable per G.S. 136-27.1), without any cost to the Department.

6. Each of the parties covenants that if it enters into any subcontracts in order to perform any of its obligations under this contract, it shall require that the contractors and their subcontractors comply with the requirements of NC Gen. Stat. Article 2 of Chapter 64. In this E-Verify Compliance section, the words contractors, subcontractors, and comply shall have the meanings intended by N.C. Gen. Stat. § 160A-20.1.

By Executive Order 24, issued by Governor Perdue, and N.C. G.S.§ 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, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

L.S. ATTEST:

BY: _____

TITLE: _____

CITY OF DURHAM

BY: _____

TITLE: _____

DATE: _____

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.

Approved by _____of the local governing body of the City of Durham as attested to by the signature of Clerk of said governing body on _____(Date)

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(SEAL)

_____
(FINANCE OFFICER)

Federal Tax Identification Number

_____

Remittance Address:

City of Durham

_____

_____

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (Date)

ITEM NUMBER	SECTION#	PAY ITEM	UNITS	QUANTITY
0022000000-E	225	UNCLASSIFIED EXCAVATION	CY	740
5326200000-E	1510	12" WATER LINE	LF	890
5572200000-E	1515	12" TAPPING VALVES	EA	3
5649000000-N	1515	RECONNECT WATER METER	EA	3
5804000000-E	1530	ABANDON 12" UTILITY PIPE	LF	644
		ENGINEERING SERVICES	LS	1

TOTAL COST 155,000

EXHIBIT A