

**AGREEMENT OVERVIEW**

NORTH CAROLINA  
BUNCOMBE COUNTY

**DATE: 03/18/2024**

**PARTIES TO THE AGREEMENT:**

**PROJECT NUMBERS:**

NORTH CAROLINA DEPARTMENT  
OF TRANSPORTATION

WBS ELEMENTS: BP13.R049.1

AND

BUNCOMBE COUNTY

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”):** The replacement of NCDOT Bridge #100154 near Barnardsville.

**ESTIMATED COST TO OTHER PARTY: \$2,831,000**

**ESTIMATED COST OF THE PROJECT: \$3,400,000**

**PAYMENT TERMS:** Buncombe County will submit payment upon execution of agreement and receipt of State Emergency and Disaster Relief Funds (SERDRF).

**MAINTENANCE:** Department

**EFFECTIVE DATES OF AGREEMENT:**

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

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

**ESTIMATED SCHEDULE (based on current project information):**

**PRELIMINARY ENGINEERING START:** February 2024

**25% DESIGN PLANS COMPLETION:** June 2024

**PLEASE NOTE:** The Department will collaborate with Buncombe County to coordinate the schedules of the Bridge #100154 Project and the adjacent Buncombe County Stream Mitigation Project.

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 **Buncombe County**, hereinafter referred to as the **County**; 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.

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 136-66.1 and 136-66.3; and,

**WHEREAS**, the **Department** and the **County** 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,

**WHEREAS**, the **County** has received funding for replacement of a bridge in Buncombe County; and,

**WHEREAS**, the **County** has requested that the **Department** to administer the funding for this Project; and,

- i. **WHEREAS**, the **Parties** hereto wish to enter into an agreement for scoped work to be performed or provided by the **Department** (including reviews, goods, or services) with reimbursement for The **County** shall be responsible for partial right of way donation to the **DEPARTMENT** as shown in the **PROJECT DELIVERY** Provision.

the costs thereof by the **County** as hereinafter set out; 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:

**I. RESPONSIBILITIES**

**A. DEPARTMENT**

The **Department** shall be responsible for project delivery to include planning, design, partial right of way acquisition, utility relocation, construction and/or maintenance as shown in the **PROJECT DELIVERY** Provision.

**B. COUNTY**

- ii. The **County** shall be responsible for payment as shown in the **COSTS AND FUNDING** Provision.

## II. PROJECT DELIVERY REQUIREMENTS

### A. PRELIMINARY ENGINEERING AND CONSTRUCTION

- iii. The **Department** will be responsible for preparing the environmental and/or planning document, obtaining any environmental permits, and preparing the project plans and specifications.
- iv. The **Department** shall construct the Project in accordance with the plans and specifications for the Project. The **Department** shall administer the construction contract for said Project. All work shall be done in accordance with Departmental standards, specifications, policies, and procedures.

### B. RIGHT OF WAY ACQUISITION

- i. The **Department** will be responsible for acquiring any needed right of way for the Project on the south side of Ivy Creek in accordance with the policies and procedures set forth in the North Carolina Right of Way Manual.
- ii. The **County** will be responsible for donating to the **Department** any needed right of way for the Project on the north side of Ivy Creek in accordance with the policies and procedures set forth in the North Carolina Right of Way Manual.

### C. MAINTENANCE

Upon completion of the Project:

- i. The **Department** shall be responsible for all traffic operating controls and devices which shall be established, enforced, and installed and maintained in accordance with the North Carolina General Statutes, the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, the latest edition of the "Policy on Street and Driveway Access to North Carolina Highway," and department criteria.
- ii. The roadway improvements that are within state-owned right of way shall be considered a part of the State Highway System and shall be owned and maintained by the **Department**.

## III. COSTS AND FUNDING

### A. PROJECT COSTS

The estimated cost of the Project is \$3,400,000. The **County** shall participate in project costs up to a maximum of \$2,831,000. **The County shall provide payment upon full execution of this agreement and after receiving each quarterly distribution in the amount of \$707,750 of**

State Emergency and Disaster Relief Funds (SERDRF). Quarterly distributions of SERDRF Funds are scheduled to be disbursed April 10, 2024; July 10, 2024; October 10, 2024; and January 10, 2025. The **Department** is responsible for all costs that exceed \$2,831,000. Both **Parties** understand that this is an estimated cost and is subject to change.

## B. FUNDING

The **County** and **Department** will comply with any requirements of State Emergency and Disaster Relief Funds (“SERDRF”) and North Carolina Land and Water Funds (“NCLWF”), a division of the Department of Natural and Cultural Resources (“DNCR”) used on this project. Quarterly reporting information required by the NC Department of Public Safety (DPS) for SERDRF Funds will be supplied by the **Department** to the **County**, and the **County** will submit to NC DPS.

## IV. 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 **County** 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 **County** is solely responsible for all agreements, contracts, and work orders entered into or issued by the **County** 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 **County** 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 **County** 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 **County'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 **County** acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the **Department** or **County**, 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 **County** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes the **Department's** signature as if actually signed by the **Department** in writing or **County's** signature as if actually signed by **County** in writing. The **Department** and **County** 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 **County** 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).

**SIGNATURE PAGE**

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

**(DOCUSIGN ONLY)**

Authorized Signer: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

**BUNCOMBE COUNTY**

FED TAX ID NO: \_\_\_\_\_

Finance Officer: \_\_\_\_\_

REMITTANCE ADDRESS:

Print Name: \_\_\_\_\_

\_\_\_\_\_

Date Signed: \_\_\_\_\_

\_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

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

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

DATE: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (DATE)

**SIGNATURE PAGE**

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

**(INK SIGNATURES ONLY)**

ATTEST: Authorized Signer: \_\_\_\_\_

BY: \_\_\_\_\_ Print Name: \_\_\_\_\_

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

Date Signed: \_\_\_\_\_

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

BUNCOMBE COUNTY

FED TAX ID NO: \_\_\_\_\_ Finance Officer: \_\_\_\_\_

REMITTANCE ADDRESS: \_\_\_\_\_ Print Name: \_\_\_\_\_

\_\_\_\_\_ Date Signed: \_\_\_\_\_

\_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION (DocuSign)**

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

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

DATE: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (DATE)