

Interlocal Agreement for the Improvement of Brush Road

This Interlocal Agreement for the Improvement of Brush Road (this “**Agreement**”) is entered into on this ____ day of _____, 2016 (the “**Effective Date**”) by and between the Piedmont Authority for Regional Transportation (“**PART**”), and the City of Greensboro (“**Greensboro**”).

WITNESSETH:

WHEREAS, PART has entered into a contract with BAR Construction Company, Inc. (the “**Contractor**”) for the construction of the Coble Intermodal Transportation Center project (the “**ITC Project**”); and

WHEREAS, the Contractor submitted the plans for the ITC Project to Greensboro, which plans were reviewed and approved by Greensboro; and

WHEREAS, as part of the approval for the ITC Project, Greensboro required that PART mill, resurface and widen the existing pavement of Brush Road to thirty-six (36) feet; and

WHEREAS, during the course of the site development work for the Project, Volkert, Inc. (the “**Engineer**”) discovered that Brush Road is currently insufficient to handle the heavy vehicle loading from existing businesses and PART’s use for passenger bus ingress/egress; and

WHEREAS, the Engineer has recommended removing the existing Brush Road pavement and constructing a new thirty-six (36) foot wide Brush Road (the “**Brush Road Project**”); and

WHEREAS, PART and Greensboro have determined that is in the public benefit and interest to construct the Brush Road Project and to share the additional costs added to the ITC Project associated with the Brush Road Project; and

WHEREAS, this Agreement is authorized and entered into pursuant to North Carolina General Statutes, Chapter 160A, Article 20 and Article 27; and

WHEREAS, Greensboro has the duty to keep the public streets, sidewalks, alleys and bridges in proper repair (N.C. Gen. Stat. § 160A-296(a)(1)) and the authority to widen, extend, pave, clean and otherwise improve existing streets (N.C. Gen. Stat. § 160A-296(a)(3)); and

WHEREAS, PART has the authority to construct, improve, maintain, repair, operate or administer any component parts of a public transportation system (N.C. Gen Stat. § 160A-639(8));

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PART and Greensboro agree as follows:

1. PART's Obligations to Qualify for Reimbursement

a. PART shall manage, administer and construct the improvements identified in the Contractor's Construction Cost Estimate in Exhibit A according to the plans and specification approved by the City. All plans, specifications, and designs are subject to review and approval by the City and shall be in a form reasonably acceptable to it. Notwithstanding the foregoing, the City hereby confirms that it has previously reviewed and approved the plans, specifications and design for the Brush Road Project. Copies of the City's approvals are attached hereto as Exhibit B attached hereto and incorporated herein by reference.

b. This work shall be directed by Volkert or another Professional Engineer properly licensed in the State of North Carolina. Upon completion, this work shall be certified by Volkert or another Professional Engineer as appropriate.

c. PART shall ensure all work and certifications of this work on the Brush Road Project shall be subject to the acceptance by the Greensboro Department of Transportation. This acceptance shall not be unreasonably withheld. Notwithstanding the foregoing, the City hereby confirms that all work performed on the Brush Road Project as of the date of this Agreement has been approved by the Greensboro Department of Transportation.

d. PART and/or its subcontractors shall comply with all the applicable federal, state, and local laws, including, but not limited to Article 8 of the Chapter 143 of the North Carolina General Statutes and not discriminate on the basis of biological sex, race, color, religion, national origin, or disability.

e. PART shall dedicate and record to the City without charge, all necessary easements for the Brush Road Project. PART shall also provide necessary construction and slope easements on its property for such portions and for the period of construction and subsequent maintenance without charge. It is understood and agreed that PART, at no expense or liability whatsoever to the City, shall be responsible for acquiring for conveyance to the City, any additional right of way and/or easements required for the Brush Road Project; provided, however, that PART shall not be responsible for acquiring any easements that may be needed off of the site of City property for work related to the items listed in Exhibit A or for any related costs. Final payment by the City hereunder shall be subject to the City's receipt of documents of conveyance in a form acceptable to the City.

f. PART shall permit the City to inspect and approve the construction of the Brush Road Project.

g. PART shall obtain written authorization from the City to proceed through each of the following steps as it pertains to the Brush Road Project:

1. Plan approval.
2. Contract specification and proposal review.
3. Preconstruction Conference
4. Notice to proceed
5. Change Orders (increase or decrease)
6. Construction design changes.

Notwithstanding the foregoing, the City hereby confirms that PART has obtained all required written authorizations for the Brush Road Project as of the date of this Agreement as included in Exhibit B attached hereto and incorporated herein by reference.

2. Schedule of Reimbursement

a. The City will reimburse PART for PART's actual construction costs, excluding insurance, attorney's fees, and land acquisition for the improvements identified in Exhibit A in an amount not to exceed Eighty-Two Thousand Two Hundred and Forty-Two Dollars (\$82,242.00). . PART shall submit an invoice to the City for its portion of the construction costs upon the completion of the Brush Road Project. The City shall pay such invoice within thirty (30) days of receipt. Unless otherwise agreed to by the parties in writing, any remaining costs over and above the Eighty-Two Thousand Two Hundred and Forty-Two Dollars (\$82,242.00) expended by the City shall be the responsibility of PART.

b. PART, without any cost or liability whatsoever to the City, shall cause to be relocated and/or adjusted all utilities located on its property (if any) in conflict with the Brush Road Project. Said work shall be performed in a manner satisfactory to the City prior to PART beginning construction of the Brush Road Project. The City will assist the PART, upon PART's written request, with coordinating the relocation of all utilities where necessary and will require relocation by utility companies pursuant to their franchises where applicable.

c. The City will not pay for any existing work or construction work done, or materials delivered, prior to awarding of this contract, if such work is not done in full accordance with all applicable federal, state, and local laws. Notwithstanding the foregoing, as of the date of this Agreement, the City has no knowledge of any work on the Brush Road Project which was done in violation of any applicable federal, state or local laws.

3. PART agrees to obtain all necessary permits, licenses, and approvals and to meet all governmental regulatory requirements, environmental and otherwise. It agrees to comply with all federal, state, and local regulations with regard to these construction activities. All permitting costs shall be considered a cost of the project, and as such, reimbursable expenses.

4. PART agrees to hold and save the City, its employees, agents, and representatives harmless from any damage or injury to third persons or property resulting from PART's acts or omissions or from claims for inverse condemnation as a result of the construction of the Brush Road Project and agrees to indemnify the City against any loss resulting from claims of such damage, injury, or taking related to the Brush Road Project, including, but not limited to court costs, attorney's fees, and environmental cleanup or damage.

5. PART is an independent contractor and the City shall not be responsible for the Company's acts or omissions.

6. PART assumes full responsibility for the payment of all assessments, payroll taxes, or contributions, whether state or federal, as to all employees engaged in the performance of work on the Brush Road Project. In addition, PART agrees to pay any and all gross receipts, compensation, transaction, sales, use, or other taxes and assessments of whatever nature and kind levied or assessed as a consequence of the work performed in connection with the Brush Road Project or on the compensation paid under this contract.

7. During the performance of the services under this Agreement, PART and/or its contractors, engineers and soil scientists shall maintain the following insurance, to the extent applicable:

a. General Liability Insurance, including but not limited to coverage for all premises and non-premises operations, independent contractors, broad form property damage coverage, including explosion, collapse and underground property damage hazards, personal injury liability protection including coverage relating to employment of persons, contractual liability protection, and products and completed operations coverage. This insurance shall provide bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate, and with property damage limits of not less than \$500,000 for each occurrence and not less than \$500,000 in the aggregate.

b. Automobile Liability Insurance, covering owned, non-owned, hired vehicles and trailers used in connection with this project. This insurance shall provide bodily injury and property damages limits of not less than \$1,000,000 combined single limit/aggregate.

c. Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$100,000 for each occurrence.

A copy of the certificate of insurance satisfying the above-stated requirements is attached hereto as Exhibit C. At least thirty (30) days written notice shall be given to the City prior to any cancellation, modification, or non-renewal of any insurance required under this Agreement. All project contractors and subcontractors performing work subject to reimbursement hereunder shall be required to include the City and PART as additional insureds on their General Liability insurance policies.

8. The commitment of the City to expend the described funds on the construction of these improvements is based on the factors recited in the Preamble of this Agreement by which the Brush Road Project will provide a public benefit to the City and its citizens.

9. Should PART fail to materially comply with the terms of this Agreement, PART, shall have thirty (30) days following its receipt of written notice of default from the City to remedy the default. Should PART fail to remedy the default within such thirty (30) day period, the Agreement may be terminated by the City upon written notice to PART. Notwithstanding the foregoing, if the default is of the nature that it cannot be reasonably cured within thirty (30) days, PART shall have such additional time as is reasonably necessary to cure such default; provided, however, such additional time shall not exceed one hundred twenty (120) days from PART's receipt of the written notice of default from the City.

10. This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of North Carolina. Venue for any legal action resulting from this Agreement shall lie in Guilford County.

11. Notices. Any notice given pursuant to this Agreement shall be deemed given if delivered by hand or if deposited in the United States Mail, postage paid and certified mail, return receipt requested and addressed as follows:

If to PART: Executive Director
PART
107 Arrow Road
Greensboro, NC 27409

And with a copy to:

Director of Finance and Administration
PART
107 Arrow Road
Greensboro, NC 27409

If to the City of Greensboro:

David Parrish
Assistant City Manager
City of Greensboro
300 W. Washington Street
Greensboro, NC 27402-3136

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their agents, grantees, successors, and assigns.

13. Dispute Resolution. In the event a dispute arises between or among the parties to this Agreement concerning a question or fact in connection with the requirements of this Agreement or compensation therefore, the parties hereto agree to bargain in good faith towards a mutual resolution. If the parties to this Agreement, after honest good faith negotiations, cannot reach a compromise then any party may adjudicate their dispute as allowed by the laws of the State of North Carolina.

14. Construction. The parties hereto acknowledge that this Agreement has been prepared and drafted through the efforts of all parties and all agree that in the interpretation, construction, and enforcement of the terms and conditions of this Agreement, there shall not be applied against any party the normal rules of construction that vague and ambiguous terms are to be construed against the drafting party.

15. Severability. If such provisions of this Agreement for any reason shall be declared invalid, illegal, or unenforceable, such decision shall not affect the validity of any remaining provisions that shall remain in full force and effect.

16. Counterparts; Electronic Signatures. This Agreement may be executed in counterparts and all so executed shall constitute one Agreement, notwithstanding that all parties are not signatories to the original or the same counterpart. Electronic transmissions of the signatures provided for below may be relied upon and shall have the same legal effect as the originals of such signatures.

17. Merger. This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements among the parties hereto (whether written or oral, express or implied) and is intended as a final expression of their mutual understanding. This Agreement shall not be altered, modified or amended except in writing signed by the duly authorized representatives of the parties hereto and specifically referring to this Agreement.

18. Nondiscrimination. The parties, for themselves, their agents, officials, and employees agree not to discriminate in any manner on the basis of race, color, creed, biological sex, or national origin with reference to the subject matter of this Agreement, no matter how remote.

19. Compliance with Laws. The parties agree to comply with all state and federal laws, including those relating to discrimination, in the performance of this Agreement.

20. No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

21. Assignment. Except as expressly set forth herein, neither party may assign or delegate its rights or obligations pursuant to this Agreement without the prior written consent of the other party.

22. E-Verify. Service Provider certifies that it currently complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and that at all times during the term of this Agreement, it will continue to comply with these requirements. The Service Provider also certifies that it will require that all of its subcontractors that perform any work pursuant to this Agreement to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Violation of this section shall be deemed a material breach of this Agreement.

23. Iran Divestment Act Certification. Iran Divestment Act Certification. As of the date of this Agreement, the Service Provider certifies that it is not listed on the Final Divestment List created by the State Treasurer pursuant to NCGS 147-86.58 and that the Service Provider will not utilize any subcontractor found on the State Treasurer's Final Divestment List. All individuals signing this Agreement on behalf of the Service Provider certify that they are authorized by the Service Provider to make this certification.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives:

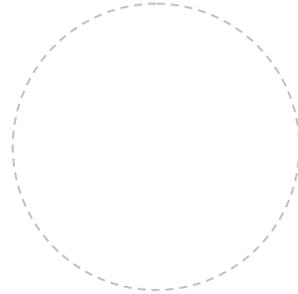
PIEDMONT AUTHORITY FOR REGIONAL TRANSPORTATION

(Corporate Seal)

By: _____

Name: _____

Title: _____



(A CITY OF GREENSBORO SIGNATURE PAGE WILL FOLLOW THIS PAGE)

EXHIBITS

EXHIBIT A – Brush Road Project Scope of Work

EXHIBIT B – Approvals from City of Greensboro

EXHIBIT C – Insurance Certificates