

**CITY OF GREENSBORO GUILFORD  
COUNTY, NORTH CAROLINA  
AGREEMENT FOR  
*Horsepen Creek Road  
Project***

**THIS AGREEMENT** is made on the \_\_\_\_ day of \_\_\_\_\_, 2013 by and between the City of Greensboro, Guilford County, North Carolina (hereinafter called "CITY") and Colonial Pipeline Company, a Delaware Corporation, for itself and its successors and assigns (hereinafter called, "COLONIAL").

**WITNESSETH:**

**WHEREAS**, on or about June 26<sup>th</sup>, 2013, the CITY and COLONIAL entered into a Professional Services Agreement for COLONIAL to conduct the engineering services required to provide a detailed construction estimate and plans to accommodate the roadway project to widen the Horsepen Creek Road in Guilford County, State of North Carolina, at which location COLONIAL has previously constructed a 32" and a 36" pipeline under authority of the following "Right of Way Agreements";

- Right-of-Way Easement document signed by James Evans Collins dated 24<sup>th</sup> day of February, 1979, and Recorded in Book 2990, Page 316, at the Register of Deeds of Guilford County, North Carolina
- Right-of-Way Easement Option document signed by Virgil Jeffries and wife Mozell Jeffries, dated 5<sup>th</sup> day of January, 1963, and Recorded Nov 18, 1963 in Book 2132, Page 700, at the Register of Deeds of Guilford County, North Carolina

**WHEREAS**, the CITY and COLONIAL also agreed in the June 26<sup>th</sup>, 2013 Professional Services Agreement that prior to any adjustments being made to COLONIAL facilities, COLONIAL would provide the CITY a detailed estimate of the actual non-betterment costs of performing said adjustments, including constructions costs, plus applicable overhead and, if the CITY decided to move forward with asking COLONIAL to actually perform the work, the CITY and COLONIAL would each make good faith efforts to negotiate a form of agreement with regard to performing and paying for that work. In that regard, it was expected that any such agreement would provide for the CITY to prepay 50% of said adjustment cost before scheduling any proposed work for each assigned project.

**WHEREAS**, on October 18<sup>th</sup>, 2013, COLONIAL provided the CITY with the scope of work, schedule, and cost estimate as described in the June 26<sup>th</sup>, 2013 Professional Services Agreement between the CITY and COLONIAL. These documents are attached to this Agreement as Exhibits A-1, A-2, and A-3, and are incorporated into this Agreement as if fully restated herein;

**WHEREAS**, the CITY desires to proceed with asking COLONIAL to perform the work necessary to adjust COLONIAL'S facilities to accommodate the widening of Horsepen Creek Road in accordance with the scope of work, schedule, and cost estimates attached to this

Agreement as Exhibits A-1, A-2, and A-3.

**WHEREAS**, the scope of work, schedule, and cost estimate, Exhibit A-1, A-2, and A-3, provided by COLONIAL contains a detailed cost estimate describing the manner and cost of adjusting said facilities, said estimate being in the amount of **Eight Hundred Sixty Seven Thousand Dollars (\$867,000)**, of which City will bear 100 % of the cost.

**NOW THEREFORE**, in consideration of the mutual covenants and premises, Colonial agrees to make adjustments to its facilities in accordance with Exhibits A-1, A-2, and A-3, subject to the following conditions and understandings:

#### **SECTION I EMPLOYMENT OF COLONIAL**

- A. CITY agrees to compensate COLONIAL for the relocation/adjustment of its facilities subject to the scope of work, schedule, and cost estimates in Exhibit A-1, A-2, and A-3. The CITY shall pay COLONIAL for the relocation/adjustment of its facilities as set forth herein and in Exhibit A-2 and A-3.

#### **SECTION II SCOPE OF SERVICES**

- A. COLONIAL WILL relocate/adjust its facilities on Horsepen Creek Road in accordance with the scope of work, schedule, and cost estimates in Exhibit A-1, A-2, and A-3.
- B. CITY agrees that COLONIAL may at its option either solicit bids from two or more pipeline contractors, use one of COLONIAL'S independent contractors under existing Work Order Contract, and/or use its own forces to effect the proposed adjustments.

#### **SECTION III PERIOD OF SERVICE**

##### **A. NOTICE TO PROCEED**

The CITY will issue a written Notice to Proceed ("NTP") following execution of this Agreement. Colonial shall not commence the relocation/adjustment of its facilities work until such NTP is received.

##### **B. PROJECT COMPLETION DATE**

The relocation/adjustment of COLONIAL'S facilities pursuant to the scope of work, schedule, and cost estimates in Exhibit B shall commence upon issuance of the written NTP. COLONIAL shall make a good faith effort to complete that work by May 16, 2014, but shall suffer no penalty if it fails to do so.

## **SECTION IV COMPENSATION**

### **A. COSTS OF THE WORK**

The total estimated cost of the physical relocation/adjustment of COLONIAL's facilities to be performed by COLONIAL is **\$867,000** as set out in the cost estimates hereto attached as Exhibits A-2 and A-3; however, said cost figure is an estimate only, and neither it nor any of the other estimated cost figures set out in the cost estimates shall in any way constitute a limit upon the amount for which the CITY shall be liable to reimburse COLONIAL hereunder. The CITY will pay COLONIAL a sum equal to 100 percent (100%) of the actual cost of the project. Should the actual cost exceed the estimated cost by an amount greater than ten (10) percent, an extra work order explaining the reason for the increase in cost will be submitted for approval by the CITY.

The CITY agrees to pay COLONIAL the sum of **\$867,000** as detailed in Exhibit A-2 and A-3, attached hereto and made a part hereof. This sum of **\$867,000** includes a 10% allowance for contingency. This contingency amount may not be spent without prior approval from the CITY'S *Chief Engineer*. Bills for fees or other compensation for services or expenses shall be submitted to the CITY in detail sufficient for a proper pre-audit and post-audit thereof. If COLONIAL'S actual costs exceed the sum of **\$867,000** by \$20,000, the additional amount(s) must be approved by the CITY'S governing board, the Greensboro City Council, prior to payment. If COLONIAL'S actual costs exceed the sum of **\$867,000** by less than \$20,000, approval of the additional amount(s) must be approved by the CITY'S Manager. Should any of the required approvals detailed in this section be denied by the appropriate representatives of the CITY, COLONIAL shall have the right to discontinue the work described herein and shall have no obligation to complete said work unless and until mutually agreeable compensation for same is agreed to by both parties hereto.

### **B. PAYMENTS AND INVOICES**

CITY will pay 50% of the cost estimate in Exhibit A-2 prior to COLONIAL beginning any of its work to relocate/adjust its pipeline facilities.

After completion of the work by COLONIAL and presentation of an invoice or invoices from COLONIAL reflecting actual non-betterment costs to make such adjustments and including any applicable loss of leased value, CITY shall reimburse COLONIAL for the balance of the actual costs, to be paid within 120 days from receipt of invoice, in accordance with the following provisions.

#### **1. Receipts Required**

Where invoices are based in part on reimbursable expenses, COLONIAL shall collect and maintain receipts for said expenses and shall make the receipts

available to the CITY, if requested. The requirement to retain receipts shall generally follow the established rules of the Federal Internal Revenue Service regarding what type of expenditure must be supported by receipts for income tax purposes.

2. Disputed Items

If any items in the final invoice submitted by COLONIAL are disputed by CITY for any reason, including the lack of supporting documentation, CITY shall temporarily delete the item(s) and shall promptly notify COLONIAL of dispute and request clarification and/or remedial action. After the dispute has been settled, COLONIAL shall include the disputed item on a subsequent invoice or on a special invoice for the disputed item(s) only. The undisputed portion of the invoices shall, however, be paid within the 120-day period for payment.

3. Late Payment

The CITY recognizes that late payment of invoices results in extra expense to COLONIAL. Therefore, if an invoice is not paid in full within 120 days of receipt, the final invoice shall thereafter bear an additional charge of 1½% per month of the unpaid amount, prorated by days, until payment is received by COLONIAL. Items in the invoice that represent disputed claims are exempt from the 120-day period.

**C. AUDIT OF RECORDS**

Colonial agrees to maintain all books, documents, papers, accounting records, and other evidences pertaining to Services performed under this Agreement and to make such materials available for audit or inspection at its office during the Agreement period and for three (3) years from the date of final payment. Audit of adjustment costs may be made at COLONIAL'S office located at 1185 Sanctuary Park, Suite 100, Alpharetta, Ga. 30009, between the hours of 9:00 AM and 4:00 PM, Monday through Friday.

## **SECTION V TERMINATION OF AGREEMENT**

### **A. DEFAULT**

This Agreement may be terminated in whole or in part in writing by either party in the event of substantial breach or default of the non-terminating party; provided that no termination for default may be effected unless the other party is given a thirty (30) calendar day cure period after written notice of intent to terminate (delivery by Certified Mail, Return Receipt Requested).

If this Agreement is terminated by the CITY for COLONIAL'S default of this Agreement, the CITY shall apply to the Guilford County Superior Court for an order of specific performance of the terms of this Agreement.

If this Agreement is terminated by COLONIAL for the CITY'S default of this Agreement, the CITY shall pay all additional costs to either complete the Scope of Services in this Agreement from the date of the default or pay all costs to repair and/or replace COLONIAL'S facilities in its original Right-of-Way. Payment in either circumstance is to be on the basis of substantiated costs.

### **B. TERMINATION BY THE CITY**

The CITY may terminate this Agreement in whole or in part in writing (delivered by Certified Mail, Return Receipt Requested) at any time.

If the Agreement is terminated by the CITY before performance is completed, COLONIAL shall be paid for amount to repair and/or replace its facilities in its original Right-of-Way. Payment is to be on the basis of substantiated costs.

## **SECTION VI GENERAL CONSIDERATIONS**

### **A. ALLOCATION OF FUNDS**

For the purposes of budgeting and appropriation of funds for the purpose of meeting its contract obligation, the CITY budgets an amount of **\$867,000** for the Fiscal Year 2013-2014 authorization. The CITY shall notify COLONIAL if at any time the City Council fails to appropriate funds to complete the Scope of Services. If this occurs, the parties agree to attempt to negotiate a settlement to provide for an orderly completion of the terms of this contract.

### **B. WARRANTIES**

Colonial warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Colonial, to solicit or secure this

Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted. For the breach or violation of this Paragraph, the CITY shall have the right to terminate this Agreement without liability, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration. Notwithstanding the above, it is understood that COLONIAL has employed non-employee engineering consultants to design and estimate the cost of the accommodation described herein.

**C. INSURANCE**

COLONIAL shall carry general liability insurance in an amount of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

**D. CONTROLLING LAW**

This Agreement is to be governed by the laws of the State of North Carolina.

**E. SUCCESSORS AND ASSIGNS**

CITY and COLONIAL, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither CITY nor COLONIAL shall assign, sublet, or transfer any interest in this Agreement without the written consent of the other.

**F. CHANGES**

The parties agree that no change or modification to this Agreement, and/or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as for this Agreement.

**G. DISPUTES**

In the event a dispute arises between the parties with reference to this Agreement the parties may mediate such matters upon mutual consent. If the parties do not so consent, or if mediation is unsuccessful in resolving the dispute, the parties may pursue any remedy available to them in law or equity in the Guilford County Superior Court.

IN WITNESS WHEREOF, CITY and COLONIAL have executed this Agreement as of the day and year first above written.

WITNESS:

**CITY OF GREENSBORO**  
GUILFORD COUNTY, NORTH CAROLINA

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Director of Transportation

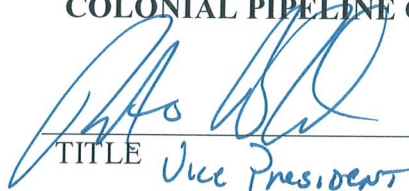
APPROVAL AS TO FORM

THIS INSTRUMENT HAS BEEN  
PREAUDITED IN THE MANNER  
REQUIRED BY THE LOCAL  
GOVERNMENT BUDGET &  
FISCAL CONTROL ACT

\_\_\_\_\_  
Deputy/Assistant City Attorney

\_\_\_\_\_  
City Accounting Manager

**COLONIAL PIPELINE COMPANY**

  
\_\_\_\_\_  
TITLE *Vice President Technical Services*

Colonial Corporate Seal:

Attest To:   
\_\_\_\_\_  
NOTARY PUBLIC OR  
CORPORATE OFFICER

