

MEMORANDUM OF AGREEMENT**For In-Contract Utility Relocation****Segra Relocation**

Carolina Crossroads I-20/I-26/I-126 in Lexington and Richland Counties

SCDOT Project ID P027662

This Agreement is made this 26th day of March, 2021 by and between the South Carolina Department of Transportation (hereinafter referred to as "**SCDOT**") and South Carolina Telecommunications Group Holdings, LLC dba Segra (hereinafter referred to as "**UTILITY**") (collectively "**the Parties**") to ensure the successful completion of the fiber optic cable 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 **SCDOT** in completing this Project and associated Utility Work.

Section I – Definitions

1. The term "Project" shall refer to **SCDOT**'s Project along Carolina Crossroads I-20/I-26/I-126 in Lexington and Richland Counties. The Project will be divided into phases, each of which will be addressed individually with Supplements to this Agreement.
2. The term "Utility Work" shall refer to an adjustment necessitated by **SCDOT**'s Project of a utility 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 **SCDOT**'s contract(s) for the design and construction of the Project.
2. The Utility Work shall be designed by a designer approved by **UTILITY** and licensed and qualified to perform the Utility Work. **SCDOT**'s contractor will either select the designer to design the Utility Work from **UTILITY**'s list of preferred designers, or will apply to become qualified by **UTILITY** in order to self-perform. If a joint use duct bank is utilized in place of individual conduits, the design can be performed by **SCDOT**'s contractor. The Utility Work shall be constructed by a contractor approved by **UTILITY** and licensed and qualified to perform the Utility Work. **SCDOT**'s contractor will either select the contractor to perform the Utility Work from **UTILITY**'s list of preferred contractors, or will apply to become qualified by **UTILITY** in order to self-perform. If a joint use duct bank is utilized in place of individual conduits, construction of this duct bank can be performed by **SCDOT**'s contractor.

3. **UTILITY** agrees to review and consider whether innovative design and/or construction measures proposed by **SCDOT** or **SCDOT's** contractor are acceptable in consideration of **UTILITY's** design criteria, standard material and construction specifications, requirements, and system functionality.
4. All Utility Work shall be in compliance with all applicable **SCDOT** policies, including **SCDOT's** Utilities Accommodations Manual – A Policy for Accommodating Utilities on Highway Rights of Way, incorporated herein by reference.
5. **SCDOT** has no duty to review **UTILITY's** utilities or components for their quality or adequacy to provide the intended Utility service.
6. Additional criteria for the Utility Work is included in Attachment A, attached hereto and incorporated herein.

Section III - Funding

1. **SCDOT** shall be responsible for the cost of utility relocations in locations where **UTILITY** has established prior rights. **UTILITY** is responsible for the cost of any betterments and for locations where prior rights do not exist.
2. **SCDOT** will pay for the cost of the Utility Work included in **SCDOT's** contract(s), and **UTILITY** will reimburse **SCDOT** for its share of the cost as set forth in Supplemental Agreements specific to each phase of the Project.
3. In accordance with its procurement practices and procedures, **SCDOT** will solicit proposals for the design and construction of the Project, including the Utility Work, and will award the **SCDOT** Contract to the contractor with the best value proposal for the overall work of the design-build phases of the Project, or, in the case of bid-build phases, to the contractor with the lowest qualified bid for the overall work of the Project.
4. **SCDOT** will invoice **UTILITY** for any amounts owed for the Utility Work. **UTILITY** shall remit the invoiced amount to **SCDOT** within 90 days of receipt of the invoice.

Section IV – SCDOT's Responsibilities

1. Include the Utility Work in **SCDOT's** contract(s) for the design and construction of the Project.
2. **SCDOT** will provide **SCDOT's** Contractor with all documents provided to **SCDOT** by **UTILITY**.
3. Apply for and receive all necessary permits for the Utility Work within **SCDOT** right-of-way.
4. Allow **UTILITY** or **UTILITY's** Consulting Engineer and/or Inspector access to the site when the Utility Work is underway.
5. **SCDOT's** contractor shall be responsible for the Utility Work until it is accepted by **UTILITY**.
6. To the extent permitted by existing South Carolina law and within the public policy limits of the South Carolina Tort Claims Act (SC Code § 15-78-10 *et seq.*), **SCDOT** hereby assumes complete responsibility for any loss resulting from bodily injuries (including death) or damages to property, arising out of any negligent act or negligent failure to act on **SCDOT's** part, or the part of any employee of **SCDOT** in the performance of the work undertaken under this Agreement.
7. **SCDOT** will include **UTILITY's** construction and design criteria in **SCDOT's** Request(s) for Proposals as requirements for the Utility Work.

Section V – UTILITY's Responsibilities

1. Provide to **SCDOT** a list of preferred designers (minimum of one) and preferred contractors (minimum of two) to meet **SCDOT's** schedule for the Project. If only one designer is provided, **UTILITY** will ensure preferred designer meets **SCDOT's** Contractor's schedule for design submittals
2. **UTILITY** shall, if desired, provide construction observation services and design reviews for the Utility Work.
3. **UTILITY** must meet the Project schedules established by **SCDOT**. All documents necessary must be provided by **UTILITY** to **SCDOT** as specified in phase specific Supplemental Agreements. **SCDOT** shall notify **UTILITY** of the date by which the documents must be provided.
4. Failure to meet the schedule requirements will subject **UTILITY** to liability for Project delays as outlined in the Supplemental Agreement(s).
5. If criteria 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 or the costs attributable to such delays.
6. **UTILITY** shall not be responsible or liable for schedule or costs if **SCDOT's** contractor fails to adhere to **UTILITY's** Design Criteria and Standard Specifications.
7. **UTILITY** shall maintain existing facilities in place at its expense until new facilities that are acceptable to **UTILITY** have been constructed, tie-ins and cut-overs have been completed, and existing facilities are ready to be removed.
8. **UTILITY** retains responsibility for operation of any temporary facilities, and must coordinate with **SCDOT** and **SCDOT's** contractor for access to the Project site for this purpose. **SCDOT's** contractor is responsible for installation and maintenance of all temporary facilities and maintains ownership of temporary facilities.
9. **UTILITY** or its representative is required to attend all meetings pertaining to **UTILITY's** involvement in the Project held by **SCDOT's** contractor or at the request of **SCDOT**.
10. **SCDOT's** contractor shall coordinate the construction schedule with **UTILITY** and provide seven (7) calendar days' notice for days in which the contractor plans to perform Utility Work. **UTILITY's** on-site representative or inspector may perform inspection to verify work for all items related to the Utility Work.
11. Prior to accessing the Project site, **UTILITY** shall coordinate with **SCDOT's** contractor regarding their safety policies and access requirements.

Section VI – General Conditions

1. **SCDOT** shall have final approval on the location of all **UTILITY's** facilities within **SCDOT** Right-of-Way.
2. All work covered under this agreement and performed by **SCDOT's** contractor shall be performed within **SCDOT** Right-of-Way, or within **UTILITY's** acquired easements, as coordinated with and approved by **SCDOT**.

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 fiber 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 **SCDOT** right-of-way by encroachment, **UTILITY** agrees that if, in the opinion of **SCDOT**'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 **SCDOT** at **UTILITY**'s expense.
8. Should additional Utility Work become necessary as a result of Project impacts on **UTILITY**'s facilities that were not foreseen at the time of execution of this Agreement, **UTILITY** agrees to work with **SCDOT** and **SCDOT**'s contractor to negotiate a resolution.
9. Subject to **SCDOT** negligence or willful misconduct, the **Parties** agree that delays in the Utility Work will impact public convenience, safety, and welfare, and that monetary damages would be inadequate to compensate **SCDOT** for delays in the construction of the Project. Consequently, **SCDOT** shall be entitled to specific performance or other equitable relief from **UTILITY** in the event of any breach of this Agreement which threatens to delay construction of the Project. This provision shall not limit any other remedies available to **SCDOT**.
10. All claims or disputes shall be filed with **SCDOT**'s Project Manager. The **Parties** will meet to attempt to resolve any dispute or claim. If unable to resolve the dispute with the **SCDOT** Project Manager, the **Parties** may appeal the claim or dispute to the appropriate **SCDOT** Deputy Secretary. The Deputy Secretary's decision in the matter shall be final and conclusive for both **Parties**, subject to non-jury appeal in the Circuit Court of Richland County.

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.

Section VIII – Authority and Law

SCDOT and **UTILITY** each bind themselves, their respective successors, executors, and assigns to the other Party with respect to these requirements, and also agree that neither Party shall assign, sublet, or transfer its respective interest in this Agreement without the written consent of the other.

This Agreement is to be interpreted under the laws of the State of South Carolina.

[Signature blocks on next page]

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

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

James M Timmons Jr

WITNESS

SOUTH CAROLINA TELECOMMUNICATIONS
GROUP HOLDINGS, LLC DBA SEGRA

Kevin Comalander
BY: Sr. Manager OSP Engineering
Kevin Corbett

DATE: 3/12/2021

Adler

WITNESS

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

BY: [Signature]

Deputy Secretary for Finance and Administration
or Designee

RECOMMENDED BY:

GDR [Signature]

Deputy Secretary of Engineering or Designee

REVIEWED BY:

Kevin Keith

State Utilities Engineer

Supplemental Utility Relocation Agreements

This Agreement is made this _____ day of _____, 2023 by and between the South Carolina Department of Transportation (hereinafter referred to as “**SCDOT**”) and South Carolina Telecommunications Group Holdings, LLC dba Segra (hereinafter referred to as “**UTILITY**”) (collectively “the **Parties**”) to outline the scope of Utility Work and associated financials for Phase 3 of SCDOT’s Carolina Crossroads I-20/I-26/I-126 Project.

All terms in this Supplemental Agreement shall have the same meaning and definitions as presented in the Master Agreement (MOA-1-22) between the Parties.

Section I – Definitions

1. The term “Design-Build” (DB) shall refer to the Project procurement and delivery method. This type of project delivery includes design and construction under one contract.
2. The term “**SCDOT’s contractor**” shall refer to the contractor that enters in a Design-Build agreement to provide design, right-of-way acquisition services, and construction of the Project.
3. The term “**Release for Construction (RFC) plans**” shall refer to the complete final construction drawings (including plans, profiles, cross-sections, notes, elevations, sections, details, and diagrams) related to the construction of the Project and any modifications to the Utility Work.
4. The term “**Bill of Materials (BOM)**” shall refer to all materials including material type, description, size and length as indicated by the RFC plans for the UTILITY’s facilities to be installed.

Section II - Agreements by the Parties

1. Utility Work design plans will be submitted by **SCDOT** to the **UTILITY**, and the **UTILITY** will review the plans in accordance with this section. **SCDOT’s Contractor** shall resolve **UTILITY’S** comments and obtain **UTILITY** approval prior to submittal of Released for Construction (RFC) plans.
2. **SCDOT** agrees that it will submit to **UTILITY** for review the 30-percent, 60-percent, and 100-percent Utility Work design plans prepared by the Contractor. **UTILITY** agrees that it will have the responsibility to review the 30%, 60%, 100% Utility Work design plans prepared by **SCDOT’s Contractor**. Upon submittal of each milestone package, **UTILITY** shall have an initial review period of 13 business days after **UTILITY’s** receipt for each submittal (30, 60, and 100-percent). **UTILITY’s** review comments will be sent to **SCDOT** to review and forward to **SCDOT’s Contractor**. Contractor shall respond to **SCDOT** and incorporate **UTILITY’s** review comments within five (5) business days. **SCDOT** will forward Contractor comment responses to **UTILITY**. **UTILITY** shall provide additional comments, if warranted, within ten (10) business days of **UTILITY’s** receipt of the Contractor comments from **SCDOT**, to **SCDOT**. If any open comments remain after the initial 13-business day review and subsequent ten (10) business day review and comment period, there will be no time constraint for **SCDOT’s Contractor** to respond; however, such additional period shall not be deemed a delay caused by **UTILITY**, default by **UTILITY**, or action by **UTILITY** resulting in liability or responsibility of **UTILITY**. Time is of the essence. Upon submission of the 60-percent and 100-percent milestone packages to **UTILITY**, **SCDOT** shall additionally submit a **BOM** to **UTILITY** for review and approval.
3. **SCDOT** agrees to install utility work in accordance with the plans. After **UTILITY** is notified by **SCDOT** that the Utility Work scope item, as defined in Table 1, is installed per the plans, **UTILITY** shall cut-over service within the timeframe outlined in Table 1.
4. **SCDOT** 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.
5. **UTILITY** is responsible for the cost of utility relocations where no prior rights exist and for the cost of any betterments.
6. The **Parties** acknowledge that the scope of work presented in this Supplemental Agreement Table 1 Scope of Utility Work below is the limit of work to be performed in-contract by **SCDOT’s contractor**.
7. Any impact to **UTILITY’s** facilities which extend beyond the limits described in Table 1 below will not be considered in-contract work and **SCDOT’s contractor** will be responsible for coordination of any and all additional Utility Agreements required to resolve conflicts between **SCDOT’s project** and **UTILITY’s facilities**. Any additional Utility Agreements shall not be covered by the scope or terms of this Agreement.
8. Refer to Table 1 for scope of Utility Work. **UTILITY** estimates the total cost of their Utility Work for Phase 3 to be \$802,055, with such costs to be allocated as follows:
 - Prior Rights, to be paid by SCDOT, at \$0.00; and
 - Non-Prior Rights and any betterments, to be paid by UTILITY at \$802,055 (“**UTILITY’S ESTIMATED REIMBURSEMENT COSTS**”).
9. Upon **UTILITY** approval of the 100% Utility design plans and prior to the beginning of construction, **SCDOT** may request to meet with **UTILITY** to review and update the **UTILITY’S ESTIMATED REIMBURSEMENT COSTS**. If during the meeting, either Party determines that **UTILITY’S ESTIMATED REIMBURSEMENT COSTS** will not be sufficient to complete the Utility Work, **SCDOT** will provide **UTILITY** with an updated cost estimate and reasonable supporting documentation and **SCDOT** shall give written notice containing the reason for the cost increases to the **UTILITY**. Subject to the verification by **UTILITY** that the cost increases represent actual costs for the applicable portions of the Utility Work, the **UTILITY** shall either: (i) approve the updated cost estimate and obtain additional funding; (ii) elect to reduce the scope of the Utility Work to exclude the portions for which **UTILITY** does not approve the updated cost estimate and for which **UTILITY** agrees to be responsible for completing outside of the Memorandum of Agreement and the Supplemental Agreement (“**Reduced Scope of Work**” for “**Excluded Portions**”); or (iii) elect to terminate the Memorandum of Agreement and this Supplemental Agreement to exclude all remaining portions of the Utility Work and for which **UTILITY** agrees to complete outside of the Memorandum of Agreement and this Supplemental Agreement (“**Termination**” for “**Excluded Portions**”). Within 15 business days of receiving **SCDOT’s** written notice of the increased **UTILITY’S ESTIMATED REIMBURSEMENT COSTS**, **UTILITY** shall notify **SCDOT** which of the foregoing options (i), (ii), or (iii) it elects, and such changes shall be documented in either change orders, an amendment to this Supplemental Agreement, or a termination agreement, each as applicable.
10. If pursuant to Section II.9, **UTILITY** elects a **Reduced Scope of Work** or **Termination**, **SCDOT** shall provide the RFC plans, information detailing the design and engineering of the Utility Work that has been completed to date, and approved construction schedule and **UTILITY** shall endeavor to complete the **Excluded Portions** so as to not delay construction progress. Notwithstanding anything else set forth in the Memorandum of Agreement or this Supplemental Agreement, the **Excluded Portions** shall fall outside the Memorandum of Agreement and

Supplemental Agreement and none of the terms set forth in either instrument, including but not limited to Section II.11, shall apply in any manner whatsoever to the **Excluded Portions**. For clarity and avoidance of doubt, in the event of a discrepancy between this Section II.10 and any other provision in the Memorandum of Agreement or this Supplemental Agreement, this Section II.10 shall control.

11. Failure by **UTILITY** to meet the contract requirements applicable to **UTILITY** shall subject **UTILITY** to liability for Project delays as provided for in the Memorandum of Agreement or herein. Notwithstanding the foregoing, **UTILITY** shall not be responsible for or have any liability for any delays caused by **SCDOT**, employees of **SCDOT**, **SCDOT's Contractor**, third parties or entities outside **UTILITY'S** authority and control, governmental agencies and entities, or force majeure events.
12. **SCDOT** shall invoice **UTILITY** for 10% of **UTILITY's** estimated In-Contract utility costs upon execution of this agreement. **UTILITY** shall remit the invoiced amount within 90 days of receipt of the invoice.
13. **SCDOT** shall invoice **UTILITY** the balances of the estimated In-Contract utility costs in quarterly payments as the work progresses.
14. **SCDOT** will endeavor to keep **UTILITY** informed as to the Project status and Utility Work, to include updated estimates as design and construction progress.

Section III – Utility's Responsibilities

1. **UTILITY** may provide **SCDOT** a conceptual layout of the Utility Work. In such event, **UTILITY** agrees to make available to **SCDOT's** contractor any CAD (Microstation v8 or latest AutoCAD) files used to prepare the preliminary plans within 60 days of this Agreement. These plans are not final construction plans or sealed engineering plans and will be provided to **SCDOT's** contractor for information only. The plans will not become part of **SCDOT's** contract for construction.
2. Within 90 days of execution of this Agreement, but no later than September 18, 2024, **UTILITY** shall provide all state, local and federal codes and standards and any other criteria, including betterments, for the design and construction of the Utility Work which will be incorporated into the **SCDOT** Contract.
3. Any changes requested by the **UTILITY** to the plans previously approved by the **UTILITY** that are Released for Construction (RFC Plans), which differ from the Scope of Utility Work or criteria provided, shall be mutually agreed to by all Parties including **SCDOT's** contractor. The **UTILITY** will be responsible for any changes in cost due to **UTILITY's** request including the cost of time delay to Project.

All other terms and conditions of the Master Agreement not changed, modified, or supplemented by this Supplemental Agreement shall remain in full force and effect as originally written.

Section IV – UTILITY-Furnished Materials

1. **UTILITY** shall have the option, in **UTILITY's** sole determination, to procure and provide **Utility-Furnished Materials** (as defined below) to be used for the Utility Work. In such instance, **UTILITY** shall notify **SCDOT** and the provisions of this Section IV shall control.
2. **UTILITY** shall provide **SCDOT** a detailed list of materials **UTILITY** anticipates providing as **Utility-Furnished Material**. List of **Utility-Furnished Materials** shall include description, size and quantity of materials based on the estimates in Table 1 Scope of Utility Work.
3. **UTILITY** shall provide **Utility-Furnished Materials** list based on **Utility-Furnished Material** request and 100% Utility Work design plans prepared by the **SCDOT's** Contractor. **UTILITY** shall make these materials available as "**Utility-Furnished Materials**". **UTILITY** is responsible for coordination, transportation, and handling of **Utility-Furnished Materials** to Contractor's location identified in the request. Upon **UTILITY's** delivery of the **Utility-Furnished Materials** to Contractor's location, Contractor shall thereafter bear all risk of loss related to the **Utility-Furnished Materials** and shall indemnify and hold **UTILITY**, its employees, agents or contractors, harmless from and against any and all liability, damage, expense, claims, liens or judgment, resulting from injury to person, including death, or damage to property resulting from or in any fashion arising out of the **Utility-Furnished Materials**. **UTILITY** shall provide **Utility-Furnished Materials** within 60 calendar days of **Utility-Furnished Material** request from **SCDOT** unless coordinated with **SCDOT's** Contractor. Notwithstanding the foregoing, **UTILITY** shall not be responsible for or have any liability for any delays related to the **Utility-Furnished Materials** that are caused by or contributed to by **SCDOT**, employees of **SCDOT**, **SCDOT's Contractor**, third parties or entities outside **UTILITY's** authority and control, governmental agencies and entities, or force majeure events.
4. **Utility-Furnished Materials** not used in Utility Work remain the property of the **UTILITY**, and Contractor is responsible for coordination, transportation, and handling of any such unused **Utility-Furnished Materials** to **UTILITY's** requested location. Any damage to any portion of the **Utility-Furnished Materials** after **UTILITY's** delivery of such **Utility-Furnished Materials** to Contractor's location will be replaced at equal or better in quality and performance at the Contractor's cost.
5. In the event of a design change during construction, **UTILITY** shall provide a detailed list of materials they anticipate providing based on the approved revised Utility Work design plans.

All other terms and conditions of the Master Agreement not changed, modified, or supplemented by this Supplemental Agreement shall remain in full force and effect as originally written.

[Signature blocks on next page]

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

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

South Carolina Telecommunications Group
Holdings, LLC DBA Segra

BY: _____

WITNESS

DATE: _____

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

BY: _____

Deputy Secretary for Finance and Administration
or Designee

WITNESS

RECOMMENDED BY:

Deputy Secretary of Engineering or Designee

REVIEWED BY:

State Utilities Engineer

Table 1 Scope of Utility Work

See Project Information Package.