

AGREEMENT OVERVIEW

NORTH CAROLINA
CUMBERLAND COUNTY

DATE: 8/5/2024

PARTIES TO THE AGREEMENT:

PROJECT NUMBERS:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

TIP #: U-4405B

AND

WBS ELEMENTS: CON 39049.3.3

CITY OF FAYETTEVILLE

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 TIP PROJECT (“Project”): Construct access management improvements on US 401 (Raeford Road) from east of Bunce Road to east of Glensford Drive.

ADDITIONAL WORK: The City will participate in costs for sidewalk and bus pads involved with the Project.

ESTIMATED COST OF THE ADDITIONAL WORK: \$773,636.00

COSTS TO OTHER PARTY: \$154,727.00

DEPARTMENT’S FUNDING: \$618,909.00

PAYMENT TERMS: The Department will invoice the City of Fayetteville upon completion of the Project.

MAINTENANCE: Department

EFFECTIVE DATES OF AGREEMENT:

START: Upon Full Execution of this Agreement

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

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 Fayetteville, hereinafter referred to as the **Municipality**; 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

**ACCOUNTS RECEIVABLE
TIP AGREEMENT – ADDITIONAL WORK
CONSTRUCTION
1000022669**

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.

DRAFT

I. 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 **Municipality** 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 **Municipality** has requested that the **Department** perform all phases of said work or provide services; and,

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 costs thereof by the **Municipality** 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:

II. RESPONSIBILITIES

A. DEPARTMENT

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

B. MUNICIPALITY

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

III. PROJECT DELIVERY REQUIREMENTS

A. PLANNING, DESIGN, AND CONSTRUCTION

- i. The **Department** will be responsible for preparing the environmental and/or planning document and obtaining any environmental permits.
- ii. The **Department** will be responsible for preparing the project plans and specifications and letting the Project to construction.

- iii. 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

The **Department** will be responsible for acquiring any needed right of way required for the Project in accordance with the policies and procedures set forth in the North Carolina Right of Way Manual.

C. MUNICIPAL UTILITY RELOCATIONS

Responsibilities

It is understood that there are no municipally-owned water and sewer lines to be adjusted or relocated at this time. If during the project it becomes necessary to adjust or relocate municipally-owned water and/or sewer lines, a separate Utility Agreement will be prepared at the appropriate time.

D. 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**.

IV. COSTS AND FUNDING

A. ADDITIONAL WORK

At the request of the **Municipality** and in accordance with the **Department's** Pedestrian Policy Guidelines or the Complete Streets Guidelines, the **Department** shall include provisions in its construction contract for the construction of pedestrian facilities and/or other additional work as indicated in the Table below. Said work shall be performed in accordance with the **Department's** policies, procedures, standards, and specifications, and the provisions of this Agreement.

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Description	Cost to Municipality
4" Sidewalks & Bus Stops pads	\$ 154,727.00
Total Estimated Cost to Municipality	\$ 154,727.00

The estimated Municipal share of the additional work is \$154,727.00. The **Parties** understand that this is an estimated cost and subject to change.

B. PROJECT COSTS

The **Municipality** has agreed to participate in the Project costs as follows:

- i. The estimated cost of the additional work is \$773,636.00. The **Municipality** shall participate in 20% of actual costs. The **Department** will participate in 80% of actual costs. Both **Parties** understand that this is an estimated cost and is subject to change.
- ii. The **Department** may consult with the **Municipality** on changes to cost estimates prior to construction, or changes to costs during construction. Consultation between the **Department** and the **Municipality** is offered as a courtesy to apprise the **Municipality** of potential cost increases and to allow appropriate budgeting. Failure of the **Department** to notify the **Municipality** of cost increases does not affect the payment terms of the agreement.

C. PAYMENT BY THE MUNICIPALITY

- i. Upon completion of the Project, the **Department** will calculate actual costs and bill the **Municipality** per **Project Costs** Provision. The **Municipality** shall reimburse the **Department** within sixty (60) days of invoicing by the **Department**. The **Department** will charge a late payment penalty and interest on any unpaid balance due in accordance with G. S. 147-86.23.
- ii. At any time prior to final billing by the **Department**, the **Municipality** may prepay any portion of the estimated cost by sending payment in accordance with the attached "Remittance Guidance". The **Department** will provide a final billing based on the fixed cost, less any previous payments that have been made.
- iii. 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.

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

CITY OF FAYETTEVILLE

FED TAX ID NO: _____

REMITTANCE ADDRESS:

Finance Officer: _____

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 **Municipality** 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:

CITY OF FAYETTEVILLE

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)