

NORTH CAROLINA

LANDSCAPE MAINTENANCE AGREEMENT

CUMBERLAND COUNTY

DATE: 10/12/2018

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

AND

WBS Element: 35196.3.24

CFDA: 20.205

CITY OF FAYETTEVILLE

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, a municipal corporation, hereinafter referred to as the "Municipality."

WITNESSETH:

WHEREAS, the Department and the Municipality propose to make certain landscape improvements under 35196.3.24, Cumberland County; and,

WHEREAS, the Municipality has agreed to participate in the responsibilities of the Project as hereinafter set out;

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

SCOPE OF THE PROJECT

1. The Project consists of installing landscape plantings at the interchange of NC 295 and US 401/Ramsey Street in Fayetteville. The Department will design the landscape improvements and install all plantings. The Municipality will maintain the plantings.

PLANNING, DESIGN, RIGHT OF WAY AND UTILITIES

2. The Department shall develop the landscape design and prepare the landscape plans and specifications in accordance with the Department's standard landscaping policies and procedures for highways.
3. All work shall be performed within the existing right of way and in accordance with Departmental standards, policies and procedures.
4. The Department does not anticipate the need to relocate and adjust any municipally-owned utilities at this time. If during the project, it becomes necessary to adjust and relocate the municipally-owned utilities, the Municipality, at no expense to the Department, shall be responsible for the relocation and adjustment of all utilities in conflict with the landscape planting.

CONSTRUCTION

5. The Department shall install, or caused to be installed, said plantings in accordance with the plans and specifications of said project as filed with, and approved by, the Department.

MAINTENANCE

6. Upon completion of the plantings, the Department shall maintain said planting areas for a period of one (1) year, at no expense to the Municipality.
7. At the end of the one (1) year establishment period, the Municipality shall assume responsibility for all maintenance and replacement of the landscape materials. Maintenance shall include, but not be limited to, the following: watering, mulching, pruning, fertilizing, weeding, pest control, mowing, and replacing plant materials. All costs of maintenance shall be borne by the Municipality, in accordance with the following provisions:
 - A. The Municipality agrees to continually maintain all plantings in accordance with generally accepted horticultural practices. The Department shall have the right to periodically inspect the maintenance practices being utilized by the Municipality.

- B. If the Department determines that the Municipality is not properly maintaining the plantings, the Department shall notify the Municipality. If proper maintenance is not performed by the Municipality within a reasonable time after notification, the Municipality agrees that the Department shall perform the necessary maintenance, or at the Department's option, shall return the planted area to a natural condition (i.e. seeded and mulched, etc.). It is further agreed that the costs of the restoration shall be reimbursed to the Department by the Municipality. Reimbursement to the Department shall be made in one final payment within sixty (60) days of invoicing by the Department. The Department shall charge a late payment penalty and interest on any unpaid balance due in accordance with N.C.G.S. § 147-86.23.
8. In the event these plantings require relocation or removal for highway construction, re-construction, maintenance or safety, the Municipality shall be given the option to remove or relocate any plantings it considers salvageable immediately upon notification by the Department, at no expense to the Department.
9. The Department, at the end of the one (1) year establishment period, shall not be responsible for any damage to the plantings that may be done by third parties.

ADDITIONAL PROVISIONS

10. Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a written Supplemental Agreement.
11. All terms 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 terminated if funds cease to be available.
12. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.
13. This Agreement is solely for the benefit of the identified parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth.

14. The Entity is solely responsible for all agreements, contracts, and work orders entered into or issued by the Entity 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.
15. 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.
16. 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 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 Entity's negligence and/or responsibilities under the terms of this agreement.
17. 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 Entity 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.
18. By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 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, 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).

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

L.S. ATTEST:

CITY OF FAYETTEVILLE

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by the local governing body of the City of Fayetteville as attested to by the signature of

Clerk of the _____ (governing body) on _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(SEAL)

(FINANCE OFFICER)

Federal Tax Identification Number

Remittance Address:

City of Fayetteville

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____(DATE)