

NORTH CAROLINA

LANDSCAPE AGREEMENT

CUMBERLAND COUNTY

DATE: 7/11/2017

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

Project: W-5514(L)

AND

WBS Elements: 44102.3.1

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."

W I T N E S S E T H:

WHEREAS, the Municipality has requested funding for certain landscape plantings in Cumberland County; and,

WHEREAS, the Department has agreed to participate in the costs of said plantings, subject to conditions hereinafter set forth; and,

WHEREAS, the Department and the Municipality have also agreed to the maintenance of said plantings 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 the construction of median and revised traffic signals at signalized intersections from SR 1007 (Owen Drive) from Walter Reid Road to US 301/Business 95. At the request of the city, the project will include landscape plantings and irrigation system installation.

PLANNING, DESIGN AND RIGHT OF WAY

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 AND MAINTENANCE

6. The Department shall install, or cause to be installed, said plantings in accordance with the plans and specifications of said project as filed with, and approved by, the Department.
7. Upon completion of the plantings, the Department shall be responsible to maintain said planting areas for a period of one (1) year.
8. 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.
 - 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.

9. In the event the 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.
10. 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.

FUNDING

11. The Municipality shall reimburse the Department one hundred percent (100%) of the actual cost of the irrigation system. Based on the estimated costs, the Municipality shall submit a check for \$84,755 the Department's Division Engineer upon execution of this Agreement by the Municipality. Upon completion of the project, if actual costs exceed the amount of payment, the Municipality shall reimburse the Department any underpayment within sixty (60) days of invoicing by the Department. If the actual cost of the irrigation system is less than \$84,755, the Department shall reimburse the Municipality any overpayment. The Department shall charge a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147-86.23.

ADDITIONAL PROVISIONS

12. It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (Federal or State). The Municipality certifies, by signature of this agreement, 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 Department or Agency.
12. 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, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).
13. Pursuant to G.S. 147-86.59, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to

G.S. 147-86.58, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The Iran Divestment Act of 2015, G.S. 147-55 et seq. requires that each vendor, prior to contracting with the State, certify that the contracting party meets the requirements of the Iran Disinvestment Act. The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/iran and will be updated every 180 days.

By execution of this Agreement each Party certifies that neither it nor its Agents or Contactors/Subcontractors 1) are on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran; 2) shall not utilize on any contract with the State agency any subcontractor that is identified on the Final Divestment List; and 3) that the undersigned are authorized by the Parties to make this Certification.

During the term of this Agreement, should the Parties receive information that a person is in violation of the Act as stated above, the Department will offer the person an opportunity to respond and the Department will take action as appropriate and provided for by law, rule, or contract. Should this Act be voided by NC General Statute, this Agreement will remain valid; however this certification will no longer be required.

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.

WITNESS:

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 said governing body on _____ (Date)

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)