



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

JAMES H. TROGDON, III
SECRETARY

July 10, 2019

TO: Jamie Justice
Town of Davidson
P.O. Box 579
Davidson, NC 28036

FROM: Cindy Iorlano
Administrative Officer I

A handwritten signature in cursive script that reads "Cindy Iorlano".

SUBJECT: **REVISED** Traffic – Construction By Others Agreement With Town of
Davidson
WBS Element No. 48735

Attached please find duplicate **REVISED** originals of the above-mentioned Agreement. Please execute these agreements by signing both originals, affixing your seal, and returning both originals **within thirty (30) days** of the date of this letter to NC Division of Highways, Attention: Cindy Iorlano, 716 West Main Street, Albemarle, NC 28001.

The Agreement verbiage has been pre-approved by the NC Attorney General's Office and is not open to modifications. If you have an issue with any of the actual **terms** of the Agreement, we will discuss those requests. However, most change requests to Agreement verbiage will either be rejected by the Raleigh Transportation Program Management office or will require approval by the Attorney General's Office, which will add a minimum of six weeks to the processing time for the Agreement.

Thank you for your assistance in this matter. Please call me at the number below if you need additional information.

Enclosures

CAI

Mailing Address:
NC DEPARTMENT OF TRANSPORTATION
DIVISION 10
716 WEST MAIN STREET
ALBEMARLE, NC 28001

Telephone: (704) 983-4400
Fax: (704) 982-3146
Customer Service: 1-877-368-4968

Website: www.ncdot.gov

Location:
716 WEST MAIN STREET
ALBEMARLE, NC 28001

NORTH CAROLINA
MECKLENBURG COUNTY

**TRAFFIC –CONSTRUCTION BY OTHERS
AGREEMENT**

DATE: 7/10/2019

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

AND

WBS Elements: 48735

TOWN OF DAVIDSON

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 Town of Davidson, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, the Department has plans to make certain street and highway constructions and improvements under WBS Element 48735, in Mecklenburg County; and,

WHEREAS, the Department and the Municipality are authorized by the following legislation, as applicable: G.S. 136-66.1 and 136.66.3 to participate in the planning and construction of a project approved by the Board of Transportation for the safe and efficient utilization of transportation systems for the public good; and,

WHEREAS, the Department and the Municipality have agreed that the jurisdictional limits of the Municipality, as of this date of the awarding of the contract for the construction of 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,

NOW, THEREFORE, in consideration of the premises and the benefits accruing to the Department and the Municipality as the result of the construction of the Project it is agreed as follows:

SCOPE OF THE PROJECT

1. The Project consists of the installation of Rectangular Rapid Flashing Beacons (RRFB) at four crosswalk intersections:
 - Concord Road (SR 2693) and Faculty Drive
 - Concord Road (SR 2693) and Thompson Street

- Main Street (NC 115) and Walnut Street
- Main Street (NC 115) and Catawba Avenue

DESIGN AND EQUIPMENT PROCUREMENT

2. The Municipality shall prepare the environmental and/or planning document, including any environmental permits, and the plans, contractor specifications and estimates (PS&E package) needed to construct the project. All work shall be done in accordance with Departmental standards, specifications, policies and procedures.
3. If the Municipality causes the professional engineering services required by this Agreement to be performed by contracting with a private engineering firm and seeks reimbursement for said services under this agreement, it is agreed as follows:
 - A. The Municipality shall ensure that an engineering firm is obtained through an equitable selection process and that prescribed work is properly accomplished in a timely manner, at a just and reasonable cost.
 - B. The Municipality when procuring architectural, professional and engineering services, must adhere to Title 23 of the Code of Federal Regulations, Part 172. The Municipality shall comply with the policies and standards for negotiated contracts as contained in the Federal-Aid Policy Guide, Part 172; said policies and standards being incorporated in this Agreement by reference (www.fhwa.dot.gov/legregs/legislat).
 - C. The Municipality shall submit all professional services contract proposals to the Department for review and approval prior to execution of any professional services contract by the Municipality. In the event that the professional services contract proposal (engineering) exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.
 - D. Reimbursement for construction administration costs cannot exceed fifteen percent (15%) of the total construction cost. This applies to private engineering firms and/or work performed by the Municipality and/or the Department. The Municipality, and/or its agent, shall perform project administration in accordance with all Departmental and Federal policies and procedures.
4. The Municipality shall purchase or furnish from stock all traffic signal equipment and other materials necessary for the completion of the project. The purchase of the equipment and materials used on the project shall be solely the responsibility of the Municipality. However, the

Department reserves the right to reject the use of any traffic signal equipment and materials deemed by the Department to be functionally inferior to equipment and materials normally used by the Department on its own projects.

UTILITIES AND RIGHT OF WAY

5. It is understood by all parties hereto that all work shall be contained within existing right of way. However, should it become necessary, the Municipality shall provide any required right of way and/or construction easements at no cost or liability whatsoever to the Department. Acquisition of right of way shall be accomplished in accordance with State procedures. The Municipality shall indemnify and save the Department harmless from any and all claims for damages that might arise on account of the right of way acquisition, drainage and construction easements for the construction of the project.
6. The Municipality, without any cost or liability whatsoever to the Department, shall relocate and adjust all utilities in conflict with the project. Said work shall be performed in a manner satisfactory to the Department prior to the Municipality beginning construction of the project.

CONSTRUCTION

7. The Municipality shall construct, or cause to be constructed, the project in accordance with the plans and specifications of said project as filed with, and approved by, the Department. The Municipality shall enter into and shall administer the construction contract for said project and the procedures set out herein below shall be followed:
 - A. The construction engineering and supervision will be furnished by the Municipality without cost to the Department.
 - B. The Department's Division Engineer may assign a resident engineer to the project who shall have the right to inspect any portion of the work being performed by the Municipality or Municipality's contractor to ensure compliance with the provisions of this Agreement. The resident engineer will furnish the Municipality with any forms that may be needed in order to follow standard Department practices and procedures in the administration of the contract.
 - C. Letting of contracts for construction and purchases shall be in accordance with North Carolina General Statute 143-129.
 - D. The Department's Division Engineer shall have the right to inspect, sample or test, and approve or reject any portion of the project during construction.

- E. The Municipality shall sample and test all materials in reasonable close conformity with the Department's Guide for Process Control and Acceptance Sampling and Testing.
- F. Upon completion of the project, the Municipality will furnish the Division Engineer with two (2) complete sets of Plan of Records.
- G. Prior to the final acceptance and payment by the Department, the Division Engineer shall make a final inspection of the completed work. The Division Engineer will be responsible for final acceptance of the completed work on behalf of the Department.
- H. During construction of the project, the Municipality shall, at no cost to the Department, provide and maintain adequate barricades, signs, signal lights, flagmen, and other warning devices for the protection of traffic in conformation with standards and specifications of the Department latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways published by the Federal Highway Administration.
- I. The Municipality shall complete said work within 1 year of execution of this agreement. If the Municipality has not completed its responsibilities, or in the opinion of the Department, satisfactory progress has not been made, the unexpended balance of funds may be recalled by the Department and assigned to other projects by the Board of Transportation.

SUBCONTRACTOR REQUIREMENTS

- 8. Any contract entered into with another party to perform work associated with the requirements of this agreement shall contain appropriate provisions regarding the utilization of Minority Businesses and Women Business Enterprises (MBE/WBE), or as required and defined in G.S. 136-28.4 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html
 - The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
 - If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

FUNDING

9. Subject to compliance by the Municipality with the provisions set forth in this Agreement, the Department shall participate in the costs of the project in an amount not to exceed \$100,000. Costs, which exceed this amount, shall be borne by the Municipality.
 - A. The Municipality may bill the Department for actual costs as herein stated. Reimbursement to the Municipality shall be made upon completion upon approval of said invoice by the Division Engineer and the Department's Financial Division.
 - B. Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than contract awarded by competitive bidding process. Written approval from the Division Engineer is required prior to the use of force account by the Municipality. Said invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in Office of Management and Budget (OMB) Circular A-87 (www.whitehouse.gov/omb/circulars/a087/a087.html). Reimbursement shall be based on actual cost incurred with the exception of equipment owned by the Municipality or its project partners. Reimbursement rates for equipment owned by the Municipality or its project partners cannot exceed the Department's rates in effect for the time period in which the work is performed. If a contractor performs the work, said invoices shall show the contract cost.
 - C. In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" (www.whitehouse.gov/OMB/circulars/a133/a133.html), dated June 27, 2003 and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.
 - D. The Municipality shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of final payment under this Agreement, for inspection and audit by the Department's Financial Division.
 - E. The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs.

- F. Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the project.
- G. All invoices must be submitted within one (1) year of completion and acceptance of the project by the Department.

MAINTENANCE

- 10. Upon completion of the project, the Municipality shall own and maintain the RRFB's and maintenance will be accomplished by the Municipality in the same manner as maintenance of other Municipally owned and maintained state system signalized intersections within the municipal limits.

ADDITIONAL PROVISIONS

- 11. All traffic operating controls and devices 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 Highways", and Departmental criteria.
- 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 a Federal or State Department or Agency.
- 13. The Department shall have the right to abandon the project at any time before the Municipality has been called upon to perform any part of its agreement. 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 any person or to the public at large.
- 14. 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).

IT IS UNDERSTOOD AND AGREED that the approval of the project by the Department is subject to the conditions of this Agreement.

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.

ATTEST:

TOWN OF DAVIDSON

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

Approved by _____ of the local governing body of the Town of Davidson as attested to by the signature of Clerk of said governing body on _____ (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.

Federal Tax Identification Number

(SEAL)

Remittance Address:

Town of Davidson

Attn: Jamie Justice

PO Box 579

Davidson, NC 28036

DEPARTMENT OF TRANSPORTATION

BY: _____

(CHIEF ENGINEER)

DATE: _____

PRESENTED TO BOARD OF TRANSPORTATION ITEM O: _____