



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PAT MCCRORY
GOVERNOR

ANTHONY J. TATA
SECRETARY

August 8, 2014

Bryan Gruesbeck, Town Manager
Town of Pittsboro
PO Box 759
Pittsboro, NC 27312

SUBJECT: Sidewalk Agreement
ER-2971H, WBS 3608.3.07
Town of Pittsboro, Chatham County

Dear Mr. Gruesbeck,

Enclosed, please find duplicate originals of the Sidewalk Agreement for the construction of concrete sidewalk along SR 1967 (Pittsboro Elementary School Road) in Pittsboro. The Town will have forty-five (45) days from the date of receipt to sign and return the agreements to me at the address listed below.

Once the two originals have been reviewed and signed, please return both originals to me for Departmental execution. Once fully executed, one agreement will be mailed to you.

If you have any questions, please feel free to call me at (910) 944-2344 or email me at awkluttz@ncdot.gov.

Sincerely,

A handwritten signature in cursive script that reads "Alison W. Kluttz".

Alison W. Kluttz, PE
Division Project Manager

Enclosures (2)

ec: R. W. Stone II, PE (w/ copy of enclosure)
cc: J. B. Loflin, PE (w/ copy of enclosure)
File

NORTH CAROLINA
CHATHAM COUNTY

SIDEWALK AGREEMENT

DATE: 8/5/2014

NORTH CAROLINA TRANSPORTATION OF
TRANSPORTATION

AND

Project: ER-2971H

WBS Elements: 3608.3.07

TOWN OF PITTSBORO

CFDA: 20.205

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

WITNESSETH:

WHEREAS, Section 1113 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA – LU) requires that Surface Transportation Program funds be available for transportation enhancement activities in the Statewide Transportation Improvement Program; and,

WHEREAS, the Municipality has requested enhancement funding for the construction of sidewalks in Chatham County; and,

WHEREAS, the Department has agreed to participate in the cost of said sidewalks subject to the conditions hereinafter set forth;

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:

GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

PERSON IN RESPONSIBLE CHARGE

If the Municipality is performing the work under this Agreement, then the Municipality shall designate a person, or persons, to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the Local Programs Management Handbook.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

SCOPE OF THE PROJECT

1. The Project consists of construction of a new concrete sidewalk along SR 1967 (Pittsboro Elementary School Road) in Pittsboro, Chatham County.

PROFESSIONAL SERVICES

2. 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 North Carolina Department of Transportation Rules and Regulations for Major Professional or Specialized Services Contracts. This policy conforms to N.C.G.S. 143-64, Parts 31 and 32, and 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, and currently available at (www.fhwa.dot.gov/legsregs/legislat.html).
 - 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.

PLANNING AND DESIGN

3. The Municipality, shall be responsible for the preparation of all environmental documentation (Categorical Exclusion), including any environmental permits, required for said project. All work shall be accomplished in accordance with Departmental and Federal procedures and guidelines.

4. The Municipality shall be responsible for the development of the design and preparation of project plans specifications, quantities and details for said project. Said work shall be accomplished in accordance with Departmental and Federal standards and specifications and submitted to the Department for review and approval prior to any work being performed by the Municipality.

UTILITIES AND RIGHT OF WAY

5. The Municipality at no expense or liability whatsoever to the Department, shall relocate and adjust all utilities in conflict with the project, and provide and/or acquire any needed right of way or construction easements for said project. Acquisition of all right of way and/or construction easements shall be in accordance with the Right of Way Acquisition Policy contained in the Federal-Aid Policy Guide, Part 712, Subpart B; and the North Carolina Department of Transportation Right of Way Manual. The Municipality shall be solely responsible for all damages and claims for damages associated with the acquisition of right of way.

CONSTRUCTION

6. The Municipality shall construct, or cause to be constructed, the project in accordance with the project plans and with Departmental and Federal policies and procedures. The Municipality, and/or its agent, shall let the contract and administer the project in accordance with Title 23 of the Code of Federal Regulations, Part 635; and North Carolina General Statute § 143-129; and the procedures set out herein below:
 - A. The Department's Division Engineer, at his discretion, 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 the Municipality's contractor to ensure compliance with the provisions of this Agreement. The resident engineer will be the Department's representative on the project. 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.
 - B. During construction of the project, if any changes in the sidewalk plans are necessary, such changes must be approved by the Division Engineer prior to the work beginning.
 - C. All materials incorporated into the project and workmanship performed by the contractor shall be in reasonable close conformity with the Standards and Specifications of the Department.
 - D. The Municipality shall not retain any portion of a payment due the contractor.
 - E. 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.

- F. During construction of the project, the Municipality shall 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 and the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways* published by the Federal Highway Administration.
- G. The Municipality shall complete said work within one (1) year of execution of this agreement.

FUNDING

- 7. Subject to compliance by the Municipality with the provisions set forth in this Agreement, and the availability of federal funds, the Department shall participate in the actual construction and engineering costs of the project not to exceed \$26,400. Costs which exceed this amount shall be borne by the Municipality.
 - A. Upon completion of the project, the Municipality shall bill the Department for actual construction costs as herein stated by submitting an itemized invoice to the Department's Division Engineer. Reimbursement shall be made in one final payment upon receipt and approval of said itemized invoice by the Division Engineer and the Department's Financial Management Division. Said invoice must be submitted within six months of completion and acceptance of the project.

Along with each invoice, the Municipality is responsible for submitting the FFATA Recipient Information Form, which is available at <https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

- 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 (http://www.whitehouse.gov/omb/circulars_default). 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.
- 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, the Federal Single Audit Act Amendments of 1996, and NCGS § 159-34, 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 adhere to applicable administrative requirements of Title 49 Code of Federal Regulations, Part 18 (www.fhwa.dot.gov/legregs/directives/fapgtoc.htm) and Office of Management and Budget (OMB) Circulars A-102 (www.whitehouse.gov/omb/circulars/index.html) "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legregs/directives/fapgtoc.htm and by Office of Management and Budget (OMB) Circular A-87 (www.whitehouse.gov/omb/circulars/index.html) "Cost Principles for State, Local, and Indian Tribal Governments." Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.
- E. The Municipality agrees that it shall bear all construction costs for which it is unable to substantiate actual costs.
- F. Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.
- G. 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.

CONSTRUCTION SUBCONTRACTOR GUIDELINES

- 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 Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 Part 26 of the Code of Federal Regulations and the North Carolina Administrative Code. These provisions are

incorporated into this Agreement by reference <https://connect.ncdot.gov/municipalities/Pages/Bid-Proposals-for-LGA.aspx>

- A. 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.
- B. If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

MAINTENANCE

- 9. The Municipality, at its own expense, shall be responsible for all liability and maintenance for said facility.

ADDITIONAL PROVISIONS

- 10. The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.
- 11. It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.
- 12. 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 Management Division.
- 13. 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.
- 14. Each of the parties covenants that if it enters into any subcontracts in order to perform any of its obligations under this contract, it shall require that the contractors and their subcontractors comply with the requirements of NC Gen. Stat. Article 2 of Chapter 64. In this E-Verify Compliance section, the words contractors, subcontractors, and comply shall have the meanings intended by N.C. Gen. Stat. § 160A-20.1.

15. The Municipality shall certify to the Department compliance with all applicable Federal environmental laws and regulations and ordinances and shall indemnify the Department against any fines, assessments or other penalties resulting from noncompliance by any entity performing work under contract with the Municipality.
16. The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department shall not be held liable by the Municipality for any expenses or obligations incurred for the Project except those specifically eligible for the federal funds and obligations as approved by the Department under the terms of this Agreement. The Department shall not reimburse the Municipality any costs that exceed the total federal funding at any time.
17. The Municipality will indemnify and hold harmless the Department, FHWA, and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claims for damage and/or liability in connection with the project activities performed pursuant to this Agreement including construction of the Project. The Department shall not be responsible for any damages or claims for damages, which may be initiated by third parties.
18. 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.
19. Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, or if the cost of work done by the Department exceed the funding award, the Department will bill the Municipality.
20. If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.
21. 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).

IT IS UNDERSTOOD AND AGREED that the approval of the project by the Department is subject to the conditions of this Agreement and that no expenditure of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

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:

TOWN OF PITTSBORO

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

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 _____ of the local governing body of the Town of Pittsboro 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:

Town of Pittsboro

P.O. Box 759

Pittsboro, NC 27312

Attn: Mr. Bryan Gruesbeck, Town Manager

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

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