

NORTH CAROLINA

**TRANSPORTATION IMPROVEMENT PROJECT
AGREEMENT – RECEIVABLE**

RUTHERFORD COUNTY

DATE: 7/19/2018

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: U-5833

AND

WBS Elements: 50225.3.1

RUTHERFORD COUNTY

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 Rutherford County, a local government entity, hereinafter referred to as the "County".

W I T N E S S E T H:

WHEREAS, the Department has plans to make certain street and highway constructions and improvements within the County under Project U-5833, in Rutherford County; and,

WHEREAS, the Department and the County have agreed that the municipal limits, as of the 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,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly, including but not limited to, the following legislation: General Statutes of North Carolina (NCGS), Section 136-66.1, Section 160A-296 and 297, Section 136-18, and Section 20-169, 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 parties to this Agreement have approved the construction of said Project with cost participation and responsibilities for 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 the widening the existing roadway of SR 2241 (Oak Street) from SR 2159 (Piney Ridge Road) to US 74.
2. At the request of the County, and in accordance with the Department's *Pedestrian Policy Guidelines*, the Department shall include provisions in its construction contract for the construction of pedestrian facilities on or along SR 2241 (Oak Street) and on or along SR 2159 (Piney Ridge Road). Said work shall be performed in accordance with the Department's policies, procedures, standards, and specifications, and the following provisions.

PLANNING AND DESIGN

3. The Department shall prepare the environmental and/or planning document, and obtain any environmental permits needed to construct the Project, and prepare the Project plans and specifications needed to construct the Project. All work shall be done in accordance with departmental standards, specifications, policies and procedures.

RIGHT OF WAY

4. The Department shall be responsible for acquiring any needed right of way required for the Project. Acquisition of right of way shall be accomplished in accordance with the policies and procedures set forth in the North Carolina Right of Way Manual.
5. It is understood by both parties that all work for the pedestrian facilities shall be performed within the existing right of way. However, should it become necessary, the County, at no expense or liability whatsoever to the Department, shall provide any needed right of way and or construction easements for the construction of the pedestrian facilities, and remove from said rights of way all obstructions and encroachments of any kind or character. Acquisition of any needed right of way shall be performed in accordance with the following state and federal policies and procedures, "Right of Way Acquisition Policy and Land Acquisition Policy, contained in the Federal-Aid Policy Guide, Part 712, Subpart B", and the North Carolina Right of Way Manual (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970). The Department shall be indemnified and held harmless from any and all damages and claims for damages associated with the acquisition of any construction easements and/or right of way.

UTILITIES

6. The Department will be responsible for the relocation and/or adjustment of any and all utilities in conflict with the Project.

CONSTRUCTION

7. The Department 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 Department shall administer the construction contract for said Project.

MAINTENANCE

8. Upon completion of the Project:
 - A. 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 Highways", and departmental criteria.
 - B. The roadway improvement(s) shall be a part of the State Highway System and owned and maintained by the Department.
9. The County, at no expense to the Department, shall assume all maintenance responsibilities for the sidewalk and release the Department from all liability relating to such maintenance.

COSTS AND FUNDING

10. The County shall participate in the costs of the Project as follows:
 - A. In accordance with the *Pedestrian Policy Guidelines*, the County shall reimburse the Department forty percent (40%), of the actual cost, including administrative costs, of the work associated with the construction of the pedestrian facilities. Based on the estimated cost of \$7,200, the County shall submit a check for \$2,880 to the Department's Division Engineer upon partial execution of the Agreement by the County. Upon completion of the Project, if actual costs exceed the estimated costs for the pedestrian facilities, the County shall reimburse the Department any underpayment within sixty (60) days of invoicing by the Department. If the actual cost of the work is less than \$7,200, the Department shall

reimburse the County any overpayment. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS § 147-86.23.

ADDITIONAL PROVISIONS

11. 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 County 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. To the extent authorized by state and federal claims statutes, each party shall be responsible for its respective actions under the terms of this agreement and save harmless the other party from any claims arising as a result of such actions.
13. All terms of this Agreement are subject to available departmental funding and fiscal constraints.
14. This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.
15. The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.
16. 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.
17. 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 upon 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 County by authority duly given.

L.S. ATTEST:

RUTHERFORD COUNTY

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 Rutherford County
as attested to by the signature of Clerk of said governing body on _____ (Date)

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

(SEAL)

BY: _____
(FINANCE OFFICER)

Federal Tax Identification Number

Remittance Address:
Rutherford County

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

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