

Contract No. 4-02

NORTH CAROLINA  
HAYWOOD COUNTY

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

1/11/02; Revised 3/15/02

ENHANCEMENT AGREEMENT

AND

TOWN OF WAYNESVILLE

PROJECT: E-4589  
CFDA NO. 20.205

AND

COUNTY OF HAYWOOD

THIS AGREEMENT, made and entered into this the 23<sup>rd</sup> day of April, 2002, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the Department; and the TOWN OF WAYNESVILLE, a municipal corporation, hereinafter referred to as the Municipality; and the COUNTY OF HAYWOOD, hereinafter referred to as the County;

WITNESSETH:

WHEREAS, Section 1201 of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) requires that Surface Transportation Program funds be available for transportation enhancement activities in their statewide transportation improvement programs; and,

WHEREAS, the Municipality has requested enhancement funding for the construction of a greenway between Lake Junaluska and US 23 Business; signage on Marshall Street, North Main Street, Woodland Drive and US 276; a greenway between the New Recreation Center (Vance Street) and Woodland Drive; a sidewalk between US 23 Business and Blue Ridge Paper; and a greenway between US 276 and Marshall Street in Waynesville, Haywood County, North Carolina; and,

WHEREAS, the Department has programmed funding in the 2000-2006 Transportation Improvement Program, as amended, for construction of said improvements under Project E-4589, Haywood County; and,

WHEREAS, the Department, the Municipality, and the County have agreed to assume certain responsibilities for said improvements as hereinafter set out and in accordance with the "Enhancement Project Guidelines" attached hereto as Exhibit "A" and made a part of this Agreement.

NOW, THEREFORE, the parties hereto shall execute this Agreement within ninety (90) days of receipt or forfeit enhancement funds awarded to the Municipality at the October 2000 NCDOT Board of Transportation meeting. This Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. The project, known as the Waynesville Greenway Trail System, Phase One, shall consist of the construction of a greenway between Lake Junaluska and US 23 Business (county); signage on Marshall Street, North Main Street, Woodland Drive and US 276 (city); a greenway between the New Recreation Center (Vance Street) and Woodland Drive (town); a sidewalk between US 23 Business and Blue Ridge Paper (town); and a greenway between US 276 and Marshall Street (town) in Waynesville. Said project, and the Department's funding participation in the project, shall be restricted to the following:

- Preliminary Engineering Activities (i.e., right of way certification, environmental documents)
- Demolition
- Erosion Control
- Grading
- Bikeway and Pedestrian Trail
- Pedestrian Bridges across Richland Creek
- Signage
- Road Re-striping
- Benches
- Trash Receptacles
- Bicycle Racks
- Crosswalks
- Street Trees

- Native Landscaping
- Administration and Design
- Contingency

2. The Municipality has submitted to the Department, for review and approval, an overall Plan for Funding and Development (Development Plan) for said project. The Municipality shall provide a preliminary schedule for improvements. Any modification to said Development Plan shall be approved by the Department. Upon approval of the Development Plan schedule by the Department and execution of this Agreement, the Department will request authorization from the Federal Highway Administration (FHWA) for preliminary engineering funds. The Municipality shall not contract for, or perform, any work prior to receipt of written authorization to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be deemed ineligible for reimbursement.

3. Upon receipt of written notification that preliminary engineering funds have been authorized, the Municipality shall prepare the Project Planning Report and the Department will coordinate any required project reviews. The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.

A. The Municipality shall advertise and conduct any required public hearings.

B. If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the Municipality shall design and implement a mitigation plan. The Municipality shall bear all costs associated with said mitigation plan, including penalties for violations and claims due to delays.

C. The Municipality shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, G.S. 113A-50, *et seq.*, and obtaining those permits required thereby in order to construct the project. During the

construction of the improvements, the Municipality, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

4. If the Municipality contracts with a private firm for services required to design and construct the project, it is agreed as follows:

A. The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and 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 ([www.fhwa.dot.gov/legsregs/legislat](http://www.fhwa.dot.gov/legsregs/legislat)).

C. The Municipality shall submit all professional services contract proposals to the Department for review and prior to execution of the professional services contract by the Municipality. In the event that the professional services contract proposal (architectural and/or engineering) exceeds \$250,000, a pre-negotiation audit must be requested from the Department's External Audit Branch. A pre-negotiation audit of a contract under \$250,000 will be performed by the Department's External Audit Branch if the Municipality requests it.

D. Reimbursement for construction administration costs cannot exceed \$30,000, which equals fifteen percent (15%) of the federal award of \$200,000. 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 State and Federal policies and procedures.

5. The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality.

6. The Municipality, at no expense or liability whatsoever to the Department, shall provide the right of way for said project. Acquisition of right of way, if necessary, 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. It is understood by all parties to this Agreement that funding is contingent upon the existence of certifiable right of way. If the Municipality enters into an Encroachment, the Agreement should be for a minimum period of ten (10) years for the real property where said greenway is to be constructed under the terms of this Agreement. The Encroachment Agreement shall be submitted to the Department's State Right of Way Negotiator for review and approval.

A. If, under the provisions of this Agreement, the property ceases to be used and designated as described in this Agreement as a result of a voluntary action of the Municipality, the Department may, at the discretion of the Secretary of Transportation, require reimbursement for the amortized value of the Department's initial investment. This provision applies for a period of ten (10) years after the date of Agreement execution.

B. The Department's initial investment shall be equal to the sum of all state and federal funds expended on the project. The amortized value of the Department's initial investment shall be calculated by dividing the initial investment by the number of years of this provision (10 years), and multiplying the result by the number of years remaining in this provision. Reimbursement to the Department shall be made in one lump-sum payment within

sixty (60) days of billing by the Department. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-241.1.

7. The Municipality, at no expense to the Department, shall accomplish or cause to be accomplished the relocation or adjustment of any and all publicly, municipally, or privately-owned utilities in conflict with construction of the project. Said utility work shall be accomplished in accordance with departmental standards, specifications, policies and procedures. A plan showing utility conflicts shall be included in the final plans.

8. The Municipality shall prepare, or cause to be prepared, the project plans, specifications for the project and engineer's estimates of project costs (PS&E package). All work shall be performed in accordance with State and Federal standards and American Association of State Highway and Transportation Official's (AASHTO) specifications, policies, and procedures. Said work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, and easements. Upon approval of the PS&E and receipt of written authorization from the Department, the Municipality shall advertise the project for construction.

9. The preliminary PS&E package is due to the Department within twelve (12) months of execution of this Agreement with a final PS&E package due within eighteen (18) months of execution of this Agreement. The Municipality shall construct, or cause to be constructed, the project within three (3) years of execution of this Agreement. The Department reserves the right to revoke the enhancement funds awarded if the Municipality is unable to submit the PS&E package to the Department for review and approval by the dates noted above. The Department may extend the deadline for PS&E submittal and/or project completion if, in the opinion of the Department, circumstances so warrant an extension of time for the required submittal. Extensions of time granted will be documented in writing.

10. In the event construction has not begun on the project, or the project has not been let to contract within six (6) months after receiving final approval of PS&E plans and proposals from the Department, the Municipality shall be responsible for documenting to the Department justification for project delay and that the project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

11. Subject to successful completion of the planning document and PS&E package and upon receipt of written authorization, the Municipality may advertise the project. The Municipality shall follow Federal Highway Administration (FHWA) regulations pertaining to the advertisement of the project and bid procedures in the award of the contract. Said Federal Highway Administration regulations are contained in Federal-Aid Policy Guide, Part 633, Subpart A, and Part 635, Subpart A; said policy being incorporated in this Agreement by reference as fully as if herein set out ([www.fhwa.dot.gov/legregs/legislat](http://www.fhwa.dot.gov/legregs/legislat)). After the advertisement of the project for construction bids, the Municipality shall submit tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals to the Department and FHWA, along with a resolution recommending award of the project to the lowest responsible bidder for review and approval prior to the contract being awarded by the Municipality.

12. The Municipality shall construct, or cause to be constructed, the project in accordance with the plans and specifications of the project as filed with, and approved by, the Department. During the construction of the project, the procedures set out below shall be followed:

A. The Municipality shall display the Department's Enhancement Program sign in a prominent place at the project site. Upon completion of the project, the Municipality shall erect a permanent sign or plaque denoting the Department's and sponsor/donor's funding participation in the project in a prominent place at, or within, the project site.

B. The Municipality shall perform or cause to be performed the necessary construction engineering, sampling and testing, and supervision of the project required during construction of the project.

C. If the Municipality desires to construct the project, or any portion thereof, with its own forces, a justification shall be submitted to the Department for review and approval.

D. During construction of the project, if any changes in the project plans are necessary, such changes must be approved by the Department prior to the work being performed.

E. The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the project during construction. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected. Upon completion of the project, the Department shall be furnished copies of all test reports and certification that all materials and construction were in conformity with the standards and specifications of the Department.

F. If the Municipality withholds retainage from payments due to its contractor(s), the Municipality shall remit the balance of the retainage to the contractor(s) upon satisfactory completion of the contract. The Municipality shall make an inspection of the completed work prior to the release and reimbursement of contractor retainage withheld and notify the Department upon satisfactory completion.

G. The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department or FHWA as a result of any review or inspection made by said representatives.

H. Letting of contracts for construction and purchase of materials, supplies, and equipment shall comply with N.C.G.S. 136-28 and/or N.C.G.S. 143-129.



I. The Municipality shall maintain records to document quantities for which the contractor is paid during any monthly estimate period.

J. The Municipality shall maintain all records that establish final documentation of quantities incorporated into the project in accordance with established state and federal procedures.

K. All project records developed by the Municipality that are not submitted to the Department shall be retained by the Municipality for a period of three (3) years after the final voucher is paid by the Federal Highway Administration.

L. Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department to withdraw participation on any or all of the items of work involved.

M. The Municipality shall also comply with the following federal and state policies: (a) Conflict of Interest; (b) Equal Employment Opportunity; (c) Title VI - Civil Rights Act of 1964; and (d) Disadvantaged Business Enterprises Administration as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the project. The Municipality shall comply with the Department's policies and procedures regarding participation by DBE firms including, but not limited to, establishing DBE goals for construction contracts, determination of a good faith effort if goals are not met, and reporting DBE participation during construction of the project.

N. The Municipality shall be responsible for ensuring that all site layout, construction work, and project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including AASHTO guidelines.

O. During construction and upon completion of the project, the Municipality shall provide and maintain adequate signage and other warning devices for the protection of the

public in accordance with the approved traffic control project plans and the latest edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways*.

13. 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 FHWA Enhancement Funds and obligations as approved by the Department under the terms of this Agreement.

14. The Department shall reimburse the Municipality to the extent of eighty percent (80%) of the approved eligible costs covered under this Agreement up to the maximum federal award of TWO HUNDRED THOUSAND DOLLARS (\$200,000). The Municipality shall provide at least twenty percent (20%) matching funds and all costs that exceed the federal award of \$200,000. Reimbursement to the Municipality shall be subject to the policies and procedures contained in Federal-Aid Policy Guide Part 140, Subpart G, and Federal-Aid Policy Guide Part 172, which is being incorporated into this Agreement by reference ([www.fhwa.dot.gov/legsregs/legislat](http://www.fhwa.dot.gov/legsregs/legislat)). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration, which is to participate in the eligible costs of the project up to the maximum award of \$200,000, subject to compliance with all applicable federal policy and procedural rules and regulations. Said reimbursement shall be made as follows:

A. The Municipality may bill the Department on a monthly basis for eligible project costs by submitting an itemized invoice, in quadruplicate, to the Enhancement Program, 1534 Mail Service Center, Raleigh, NC 27699-1534. Proper supporting documentation shall accompany each invoice as may be required by the Department.

B. Reimbursement to the Municipality for all invoices submitted shall be made upon approval of each invoice by the Department and the Financial Management Division of the Department.

C. Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved supplemental agreement.

D. Construction contract administration will be reimbursed as provided in Provision 4D of this Agreement.

E. The Municipality agrees that it shall bear all costs of any item for which it is unable to substantiate actual costs or any costs which have been deemed ineligible due to actions of the Municipality.

F. All invoices must be submitted within one (1) year of completion and acceptance of the project by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

G. The Municipality shall be responsible for adhering to applicable administrative requirements of 49 CFR Part 18 ([www.fhwa.dot.gov/legregs/legislat](http://www.fhwa.dot.gov/legregs/legislat)) and Office of Management and Budget (OMB) Circular A-102 ([www.whitehouse.gov/wh/eop/omb](http://www.whitehouse.gov/wh/eop/omb)). If the work is performed by Municipality force account, said invoices shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs as set forth in OMB Circular A-87 ([www.whitehouse.gov/wh/eop/omb](http://www.whitehouse.gov/wh/eop/omb)). Reimbursement shall be based on actual costs incurred with the exception of equipment owned by the Municipality. Reimbursement for rates of equipment owned by the Municipality cannot exceed the Department's rates in effect for the time period in which the work is performed. If the work is performed by a contractor, said invoices shall show the contract cost.

H. In accordance with OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations* ([www.whitehouse.gov/wh/eop/omb](http://www.whitehouse.gov/wh/eop/omb)), 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.

I. Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

J. 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.

15. The Municipality agrees that, if the Federal Highway Administration should not participate in certain costs because of noncompliance with Federal and/or State regulations, it will reimburse the Department for such costs caused by actions of the Municipality. Reimbursement shall be made by the Municipality to the Department within sixty (60) days of invoicing by the Department. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-241.1.

16. If the Municipality fails for any reason to reimburse the Department in accordance with the provisions for payment as hereinabove provided, North Carolina General Statute 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by N.C.G.S. 136-41.1 until such time as the Department has received payment in full.

17. The Municipality and its contractors 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 and shall require its contractor to make such materials available at its office at all reasonable times during the contract period, and for three (3) years from the date of payment of the final voucher by the Federal Highway Administration under this Agreement, for inspection

and audit by the Department, the Federal Highway Administration, or any authorized representatives of the Federal Government.

18. Upon completion of the project, the Municipality shall be responsible for the maintenance of the following improvements:

- Signage on Marshall Street, North Main Street, Woodland Drive and US 276;
- A greenway between the New Recreation Center (Vance Street) and Woodland Drive;
- A sidewalk between US 23 Business and Blue Ridge Paper; and
- A greenway between US 276 and Marshall Street at no expense to the Department.

The County shall be responsible for the maintenance of the following improvement:

- A greenway between Lake Junaluska and Howell Mill Road at no expense to the Department.

19. The Municipality and the County agree to indemnify and hold harmless the Department, to the extent allowed by law, for any third party claims for payment or damages, of any nature, asserted against the Department in connection with this project. Furthermore, the Municipality shall be responsible for ensuring compliance with all State, Federal, and local 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.

20. If, upon completion of the design phase of the project, the Municipality decides to terminate the project, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the project. If the Department decides to terminate the project, the Department shall reimburse the Municipality one hundred percent (100%) of all costs expended by the Municipality and associated with said project. In the event both parties mutually decide to terminate the project, all project costs for said project shall be shared on a 20/80 (Municipality/Department) basis in direct proportion to

the matching funds requirement. Reimbursement to the Department shall be made in one lump-sum payment within sixty (60) days of billing. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-241.1.

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 expenditures 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 triplicate, the day and year heretofore set out, on the part of the Department, the Municipality, and the County by authority duly given, as evidenced by the attached certified copy of Resolution, Ordinance or Charter Provision, as the case may be.

L.S.

ATTEST:

BY: Chyllis R. McClure  
CLERK

TOWN OF WAYNESVILLE  
BY: Elizabeth [Signature]  
MAYOR Pro Tempore



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

[Signature]  
Municipal Finance Officer

Federal Tax Identification Number  
56-6001367  
Town of Waynesville

Remittance Address:  
Town of Waynesville  
P.O. Box 100  
Waynesville, NC 28786

L.S.

WITNESS:

BY: [Signature]  
CLERK TO THE BOARD

COUNTY OF HAYWOOD  
BY: [Signature]  
CHAIRMAN

(COUNTY SEAL)

APPROVED AS TO FORM:

BY: [Signature]  
ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF TRANSPORTATION

BY: [Signature]  
STATE HIGHWAY ADMINISTRATOR

COPY OF A RESOLUTION PASSED BY THE BOARD OF ALDERMEN  
OF THE TOWN OF WAYNESVILLE, NORTH CAROLINA

A motion was made by Alderman Gavin Brown and seconded by Alderman Kenneth Moore for the adoption of the following Resolution, and upon being put to a vote was duly adopted:

WHEREAS, the Municipality has requested enhancement funding for the construction of a greenway along Richland Creek between Lake Junaluska and US 23 Business; signage on Marshall Street, North Main Street, Woodland Drive and US 276; a greenway between the New Recreation Center (Vance Street) and Woodland Drive; a sidewalk between US 23 Business and Blue Ridge Paper; and a greenway between US 276 and Marshall Street in Waynesville, Haywood County, North Carolina; and,

WHEREAS, the Department of Transportation has programmed funding in the 2000-2006 Transportation Improvement Program, as amended, for said greenway construction under Project E-4589, Haywood County; and,

WHEREAS, the Municipality and the County of Haywood propose to enter into an Agreement with the North Carolina Department of Transportation for said greenway construction as described in said Agreement; and,

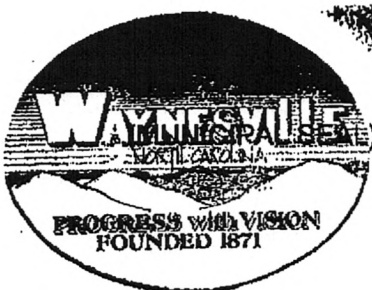
WHEREAS, under the proposed Agreement and subject to the Agreement provisions, the Department shall reimburse the Municipality to the extent of eighty percent (80%) of the approved eligible project costs up to the maximum federal award of \$200,000; and,

WHEREAS, the Municipality shall provide at least twenty percent (20%) matching funds and all costs that exceed the federal award of \$200,000.

NOW, THEREFORE, BE IT RESOLVED that the Agreement for Project E-4589 in Haywood County is hereby formally approved by the Board of Aldermen of the Town of Waynesville, and that the Mayor and Clerk of this Municipality are hereby empowered to sign and execute the required Agreement with the Department of Transportation.

I, Phyllis R. McClure, Clerk of the Town of Waynesville, do hereby certify that the foregoing is a true and correct copy of excerpts from the Minutes of the meeting of the Board of Aldermen duly held on the 9th day of April, 2002.

WITNESS, my hand and the official seal of said Municipality on this the 9th day of April, 2002.



Phyllis R. McClure  
CLERK, TOWN OF WAYNESVILLE



COPY OF A RESOLUTION PASSED BY THE BOARD OF COUNTY COMMISSIONERS  
COUNTY OF HAYWOOD, NORTH CAROLINA

A motion was made by Commissioner Bill Noland and seconded by Commissioner Carlyle Ferguson, for the adoption of the following Resolution, and upon being put to a vote was duly adopted:

WHEREAS, the Town of Waynesville (Municipality) has requested enhancement funding for the construction of a greenway along Richland Creek between Lake Junaluska and US 23 Business; signage on Marshall Street, North Main Street, Woodland Drive and US 276; a greenway between the New Recreation Center (Vance Street) and Woodland Drive; a sidewalk between US 23 Business and Blue Ridge Paper; and a greenway between US 276 and Marshall Street in Waynesville, Haywood County, North Carolina; and,

WHEREAS, the Department of Transportation has programmed funding in the 2000-2006 Transportation Improvement Program, as amended, for said greenway construction under Project E-4589 in Haywood County; and,

WHEREAS, the Municipality and the County propose to enter into an Agreement with the North Carolina Department of Transportation for said greenway construction as described in said Agreement; and,

WHEREAS, under the proposed Agreement, the Department of Transportation shall reimburse the Municipality to the extent of eighty percent (80%) of the approved eligible project costs up to the maximum federal award of \$200,000; and,

WHEREAS, the Municipality shall provide at least twenty percent (20%) matching funds and all costs that exceed the federal award of \$200,000.

NOW, THEREFORE, BE IT RESOLVED that the Agreement for Project E-4589 in Haywood County is hereby formally approved by the Board of Commissioners of the County of Haywood, and, on behalf of the County of Haywood, the Chairman of the Board of County Commissioners and Clerk to said Board are hereby empowered to sign and execute the required Agreement with the Department of Transportation.

I, C. Jack Horton, Clerk to the Board of County Commissioners of Haywood County, North Carolina, do hereby certify that the foregoing is a true and correct copy of the excerpts from the Minutes of the Board of County Commissioners duly held on the 8th day of April, 2002.

WITNESS my hand and the official seal of said County on this the 8th day of April, 2002.

(COUNTY SEAL)

  
\_\_\_\_\_  
CLERK TO THE BOARD OF HAYWOOD COUNTY  
COMMISSIONERS

## ENHANCEMENT PROJECT GUIDELINES

1. A DOT Transportation Improvement Program (TIP) Project Number (E-4XXX) has been assigned. The Sponsor's application stated the estimated cost for the proposal, budgeting each phase of the project as well as stating the estimated time schedule to accomplish each phase of the project. The Board of Transportation awarded federal funds for projects based upon review of the budget submitted. The program is a cost reimbursement program. The award amount is the maximum amount allowed for reimbursement for eligible project cost. The sponsor must accomplish the project with the total of federal funds awarded plus other sponsor funding sources.
2. The Enhancement Project Manager (hereafter referred to as EPM) shall request that a project Agreement be prepared. The EPM will coordinate the agreement with the Enhancement Agreement Contract Officer who will transmit the Agreement to the Sponsor and/or Governmental Cosponsor for execution.
  - Once the Agreement is executed by the Sponsor and/or Governmental Cosponsor, the Agreements Unit will place it on the North Carolina Board of Transportation Agenda for approval. Upon Board approval and execution by the Highway Administrator, the Agreements Unit will return a fully executed copy to the Sponsor and/or Governmental Cosponsor.
  - ***Any costs incurred prior to execution of the agreement will not be eligible for reimbursement.***
3. The EPM will coordinate a scoping meeting to discuss project implementation.
4. If the project award includes an amount for preliminary engineering (PE) funds, then the EPM will request approval from FHWA for authorization of PE funds. The EPM shall provide written notification of funding authorization and authorization to proceed.
5. Upon completion of the *draft* Planning Environmental Document (generally, these projects qualify as a Type I Categorical Exclusion) by the Sponsor or its Consultant, the Sponsor will provide DOT with two (2) copies of the *draft* Planning Document for review and approval. The EPM will notify the Sponsor of DOT's approval and/or comments. EPM will be responsible for obtaining FHWA approval of the *final* Planning Document.
  - The Sponsor shall obtain any required permits for the project and verify to EPM that all such required permits have been obtained and have not expired prior to project construction.
6. Except for a select few projects where the approved project is for the acquisition of ROW (scenic viewsheds), the sponsor is responsible for the acquisition / lease of property. The Sponsor shall comply with all rules and regulations and right of way must be certified in accordance with the Uniform Relocation Assistance and Real Property Act of 1970. Certification of existing municipally-owned right of way shall be in accordance with all rules, regulations, and procedures governing the acquisition of right of way.
  - The Sponsor must contact the Division Right of Way Agent prior to initiating any right of way acquisition. This is to review the required approved negotiation and relocation processes that must be followed by the Sponsor. No reimbursement for right of way costs, if eligible, shall be made to the Sponsor until this meeting has been held and the Agent has notified EPM in writing.
  - The Sponsor shall accomplish or cause to be accomplished the relocation and/or adjustment of any and all publicly or privately owned utilities in conflict with the project. A plan showing utility conflicts shall be included with the final plans.

7. Upon receipt of the authorization letter, the Sponsor may proceed with consultant selection or in-house planning efforts. Prior to soliciting bid proposals from consultants for planning and design work, a copy of the proposal should be sent to EPM for review and approval of the scope of work.
  - *(\*\*NOTE: If the consultant is not on the list of pre-qualified consultants used by DOT, the consultant must have acceptable accounting systems and be approved by DOT.)*
8. The Sponsor shall select a proposed consultant in accordance with Federal and State Guidelines for procurement as stated in "Rules and Regulations for Major Professional or Specialized Services Contracts" that conforms to NCGS 143-64, and Title 23 of the Code of Federal Regulations (CFR). The Sponsor shall submit three (3) copies of the proposed consultant agreement to EPM for review and approval by EPM. EPM will coordinate the review process. The Sponsor will include changes requested by the EPM.
  - *(\*\*Note: A pre-negotiation audit must be performed by the Department's External Audit Branch in the event that the architectural and/or engineering services exceed \$250,000.00. A pre-negotiation audit of a contract under \$250,000.00 will be performed if the Sponsor or EPM requests it).*
  - Upon approval of the Engineering Contract, invoices may be submitted by the Sponsor for costs incurred as specified in the agreement. All **preliminary engineering and design** invoices should be submitted to the EPM for approval. Please note that the project number and whether the invoice is a partial or final invoice should be included on each invoice. Proof of Payment and supporting documentation will not be necessary if the Sponsor is reporting under the Single Audit Act.
9. Preliminary design plans (3 sets) will be submitted by Sponsor to EPM for review and approval. Preliminary design plans are to show design, profiles, typical section, construction limits, drainage, and proposed right of way and /or easements. The project shall be designed in accordance with federal and state regulations as well as AASHTO standards.
10. Prior to the Sponsor advertising for construction bids, the Sponsor shall submit final plans, specifications, and contractor's estimates (PS&E package 3 sets of final plans/2 copies of contract proposals) to the EPM for review and approval.
11. After EPM has reviewed and approved the final plans and contract proposals for the project, the EPM will obtain FHWA approval to proceed with the advertisement of the construction project.
12. Upon receipt of approval by FHWA, the EPM shall notify the Sponsor that they may proceed with advertisement. The Sponsor shall follow FHWA regulations as contained in the Federal-Aid Policy Guide. Letting of contracts for construction and purchases shall be in accordance with NCGS 143-129.
  - Prior to award of the construction contract by the Sponsor, a copy of all bids received by the Sponsor and two (2) copies of the successful responsible bidder's contract will be submitted to the EPM. *FHWA and Board of Transportation must concur prior to award of contract by Sponsor.*
  - The EPM will notify the Sponsor of FHWA and Board of Transportation concurrence, thereby authorizing Sponsor to proceed with the awarding of the construction contract.

13. The Department will oversee and inspect the project construction. All **construction invoices** should be submitted to EPM for review and approval *subject to all conditions* contained within the project Agreement. The Sponsor must adhere to Cost Principles as contained in OMB Circular A-87, Administrative Requirements as contained in 49 CFR 18, and shall arrange for an independent audit in compliance with NCGS 159-34 and in accordance with OMB Circular A-128.
- Any monies due from the Sponsor or any costs not reimbursed to the NCDOT by FHWA shall be borne by the Sponsor and are subject to deduction from any other monies owed to the Sponsor or Governmental Cosponsor.
  - The funding of this project shall be as follows: Up to eighty percent (80%) from Transportation Enhancement Funds as allocated by the FHWA; at least twenty percent (20%) from non-STP matching funds. The maximum amount to be paid to the sponsor shall not exceed the award by the Board of Transportation. The Department shall have no liability for project costs that exceed the authorized Transportation Enhancement Funds and the Sponsor shall bear all project costs for which it is unable to substantiate actual cost.
  - In the event that the Sponsor does not undertake construction of the project for which sums of Federal Funds have been paid for preliminary engineering by the end of the third year following execution of the project agreement, then the Sponsor shall repay any such expended Federal Funds in accordance with the terms of the project agreement. Further, in the event that funding is withdrawn or adjusted by FHWA, the DOT shall have no further obligation to the Sponsor or liability for the project.
14. The Sponsor and/or Governmental Cosponsor shall be responsible for the proper maintenance of the completed improvements and the costs thereof. Any funds generated as a direct result of the federal award must be used for the preservation and operation of the Transportation Enhancement funded project. Further, the Department is indemnified and held harmless from any and all claims that might arise on account of such project.

**NOTE: PLEASE MAKE SURE YOU HAVE OBTAINED PROPER DOT AUTHORIZATION AND/OR APPROVAL BEFORE BEGINNING WORK ON ANY PHASE OF THE PROJECT.**