

# CITY OF HIGH POINT AGENDA ITEM



**Title:** Supplemental Agreement with NCDOT for a Congestion Mitigation Air Quality (CMAQ) Grant

**From:** Mark McDonald, Transportation Director

**Meeting Date:** Monday March 21, 2016

**Public Hearing:** No

**Advertising Date:** NA

**Advertised By:** NA

**Attachments:** Supplement Agreement, Federal Funding for Greenway

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**PURPOSE:** Consideration of a Supplemental Agreement with the North Carolina Department of Transportation (NCDOT) for a CMAQ grant.

**BACKGROUND:** Congestion Mitigation & Air Quality (CMAQ) is a Federal program that funds transportation projects and programs in air quality nonattainment and maintenance areas to help achieve and maintain national standards for air quality pollutants. In North Carolina, NCDOT serves as the administrator for the program, and funds are awarded at the MPO level to projects within eligible counties. The City of High Point was awarded CMAQ funding allocated to the High Point MPO by the Federal Highway Administration (FHWA) for construction of a greenway trail connecting University Park on Deep River Road to the Piedmont Environmental Center on Penny Road. City Council approved a Municipal Agreement for this funding in December 2015, but NCDOT made changes to the Transportation Improvement Program and Federal Aid numbers for the project, requiring execution of this Supplemental Agreement.

**BUDGET IMPACT:** NCDOT will allocate a maximum of \$1,236,000 of CMAQ funds to the City of High Point. The grant recipient is responsible for providing the required local match and meeting Federal funding requirements, so the City will provide 20% (\$309,000) funded from Two-Thirds General Obligation Bonds.

**RECOMMENDATION / ACTION REQUESTED:** The Department of Transportation recommends approval of this Agreement. City Council's consideration of this request is appreciated. Transportation Planning Administrator Greg Venable and I will be available at the Monday March 21 meeting to address questions.

NORTH CAROLINA  
GUILFORD COUNTY

**2<sup>nd</sup> SUPPLEMENTAL AGREEMENT**

DATE: 2/10/2016

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

TIP #: EL-5104

AND

WBS ELEMENTS: PE 45215.1.1

ROW \_\_\_\_\_

CITY OF HIGH POINT

CON 45215.3.1

OTHER FUNDING:

FEDERAL-AID #: CMAQ-0710(036)

CFDA #: 20.205

TOTAL SUPPLEMENTAL FUNDS [NCDOT PARTICIPATION] \$1,236,000

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 High Point, hereinafter referred to as the "Municipality."

**WITNESSETH:**

WHEREAS, the Department and the Municipality on 11/20/2009, entered into a certain Project Agreement for the original scope: the preliminary engineering of a High Point Greenway Trail beginning at the entrance to University Park off Deep River Road (SR 1523) and ending at the entrance to the Piedmont Environmental Center off Penny Road (SR 1536) in Guilford County, programmed under Project EL-5104; and,

WHEREAS, the Department and the Municipality on 2/13/2014, entered into a Supplemental Agreement to extend the completion date of the Project; and,

WHEREAS, this Supplemental Agreement is to add the construction phase to the Project; and,

WHEREAS, the Department with the concurrence of the High Point MPO has allocated additional Congestion Mitigation and Air Quality (CMAQ) funding for the construction phase of the Project,

NOW THEREFORE, the parties wish to supplement the aforementioned Agreement whereby the following provisions are amended:

## **2. SCOPE**

**Original Scope:** The Project consists of the preliminary engineering of a High Point Greenway Trail beginning at the entrance to University Park off Deep River Road (SR1523) and ending at the entrance to the Piedmont Environmental Center off Penny Road (SR 1536) in Guilford County.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Planning, Engineering and Design
- Environmental Documentation

**Supplemental Scope:** This Supplemental Agreement is for the construction of the High Point Greenway Trail between Deep River Road (SR 1523) and ending at the entrance to the Piedmont Environmental Center off Penny Road (SR 1536) that will provide access to schools, commercial centers, employment centers parks and recreational activities in Guilford County.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Construction

## **3. FUNDING**

The Department's original participation was \$95,000. The Department agrees to reimburse the Municipality an additional \$1,236,000 of Congestion Mitigation and Air Quality funds.

The Municipality's original local match was \$23,750. The Municipality will provide \$309,000 as their local match and any costs that exceed the total estimated Project cost of \$1,663,750.

### **WORK PERFORMED BY NCDOT**

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, during any phase of the delivery of the Project, shall reduce the funding available to the Municipality under this Agreement. The Department will set aside ten percent (10%) of the total estimated cost, or \$166,375, to use towards the costs related to review and

oversight of this Project, including, but not limited to review and approval of plans, environmental documents, contract proposals, engineering estimates, construction engineering and inspection oversight, and other items as needed to ensure the Municipality's appropriate compliance with state and federal regulations.

In the event that the Department does not utilize all the set-aside funding, then those remaining funds will be available for reimbursement to the Municipality at the above reimbursement rate. For all costs of work performed on the Project, whether incurred by the Municipality or by the Department, the Municipality shall provide the non-federal match. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

#### **4. TIME FRAME**

The Municipality, and/or its agent, shall complete all work outlined in the Agreement within **three years** of authorization of Federal Construction funds. Completion for this Agreement is defined as completion of all construction activities or implementation activities, acceptance of the project, and submission of a final reimbursement package to the Department.

If additional time is needed to complete the Project, then a supplemental agreement must be executed. The Department and/or FHWA reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates included herein.

#### **9. REIMBURSEMENT**

##### **SCOPE OF REIMBURSEMENT**

Activities eligible for funding reimbursement for this Project shall include:

- Construction

##### **REIMBURSEMENT GUIDANCE**

The Municipality shall adhere to applicable administrative requirements of Title 2 Code of Federal Regulations, Part 200 ([www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm)) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards."

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](http://www.fhwa.dot.gov/legregs/directives/fapgtoc.htm). 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.

#### **REIMBURSEMENT LIMITS**

- **WORK PERFORMED BEFORE NOTIFICATION**

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

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

At no time shall the Department reimburse the Municipality costs that exceed the total funding per this Agreement and any Supplemental Agreements.

- **UNSUBSTANTIATED COSTS**

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

- **WORK PERFORMED BY NCDOT**

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of \$1,331,000 available to the Municipality under this Agreement. The Department will bill the Municipality for the non-federal match of any costs that the Department incurs on the Project and for any costs that exceed the Total Estimated Cost.

- **CONSTRUCTION ADMINISTRATION**

Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project.

These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **FORCE ACCOUNT**

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 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." Reimbursement shall be based on actual eligible costs 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.

#### **BILLING THE DEPARTMENT**

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

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

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

### **13. CONTRACT PROPOSAL AND ENGINEER'S ESTIMATE**

#### **CONTRACT PROPOSAL**

The Municipality shall develop a contract proposal that will be advertised for bids. The proposal shall comply with NCDOT Specifications and Standard Drawings as applicable to the Project. The proposal shall also contain provisions, as applicable, per Title 23 Code of Federal Regulations 633 and 635 to include, but not be limited to: FHWA 1273, Buy America, Davis-Bacon Wage Rates, Non-discrimination, DBE Assurances, Contractor Certification regarding suspension and debarment, and other provisions as required by the Department.

#### **ENGINEER'S ESTIMATE**

The Municipality shall develop an itemized engineer's estimate to show items referenced to the NCDOT Standard Specifications, if applicable, along with units and unit price. The engineer's estimate will be used as the basis for comparing bids received.

### **14. CONSTRUCTION AUTHORIZATION**

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.

- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

## **15. CONTRACTOR PROCUREMENT**

### **ADVERTISE FOR BIDS**

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 2 of the Code of Federal Regulations, Part 200 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at [www.fhwa.dot.gov/legregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legregs/directives/fapgtoc.htm); and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp).

### **CONSTRUCTION CONTRACTOR REQUIREMENTS**

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

### **CONSTRUCTION SUBCONTRACTOR REQUIREMENTS**

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 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference <https://connect.ncdot.gov/projects/Contracts/Pages/LGA-Projects.aspx>.

- 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.



## **AWARDING CONTRACT**

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

## **DELAY IN PROCUREMENT**

In the event the Project has not been let to contract within six (6) months after receiving construction authorization 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.

## **FORCE ACCOUNT**

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 a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference [www.fhwa.dot.gov/legregs/directives/cfr23toc.htm](http://www.fhwa.dot.gov/legregs/directives/cfr23toc.htm). North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp).

## **16. CONSTRUCTION**

The Municipality, and/or its agents shall construct 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:

### **CONSTRUCTION CONTRACT ADMINISTRATION**

The Municipality shall comply with the NCDOT Construction Manual as referenced at <http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/>, which outlines the procedures for records and reports that must be adhered to in order to

obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

#### **RETAINAGE**

The Municipality shall not retain any portion of a payment due the contractor.

#### **SIGNAGE**

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 plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

#### **SITE LAYOUT**

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 American Association of State Highway and Transportation Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design ([www.usdoj.gov/crt/ada/stdspdf.htm](http://www.usdoj.gov/crt/ada/stdspdf.htm)).

#### **RIGHT TO INSPECT**

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 work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

#### **CONTRACTOR COMPLIANCE**

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.

## **CHANGE ORDERS**

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

## **SHOP DRAWINGS**

Shop Drawings shall be submitted in accordance with the approved plans and specifications and may require review by the Designer.

## **17. CLOSE-OUT**

Upon completion of the Project, the Municipality shall be responsible for the following:

### **FINAL INSPECTION**

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

### **FINAL PROJECT CERTIFICATION**

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

## **18. MAINTENANCE**

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the sidewalk and sidewalk components, or as required by an executed municipal maintenance agreement.

Except as hereinabove provided, the Agreement heretofore executed by the Department and the Municipality on 11/20/2009 and 2/13/2004, are ratified and affirmed as therein provided.

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:

CITY OF HIGH POINT

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

NCGS 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 \_\_\_\_\_ (Governing Board) of the City of High Point as attested to by the signature of \_\_\_\_\_, Clerk of the \_\_\_\_\_ (Governing Board) 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 High Point

\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
(CHIEF ENGINEER)

DATE: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (Date)