

**ACCOUNTS PAYABLE
MAINTENANCE AGREEMENT – MOWING
AGREEMENT ID # 12851**

AGREEMENT OVERVIEW

NORTH CAROLINA
WAKE COUNTY

DATE: 10/24/2024

PARTIES TO THE AGREEMENT:

PROJECT NUMBERS:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

WBS ELEMENTS: 5RE.109215
5RE.209215

AND

TOWN OF APEX

The purpose of this Agreement is to identify the participation in project costs, project delivery and/or maintenance, by the other party to this Agreement, as further defined in this Agreement.

SCOPE OF PROJECT (“Project”): The Municipality shall provide the personnel, equipment, labor, materials, and traffic control devices to perform mowing services in accordance with Departmental standards and specifications as described in this agreement.

COSTS TO DEPARTMENT: \$19,746.80

PAYMENT TERMS: The Town of Apex will invoice the Department upon completion of each mowing cycle.

MAINTENANCE: Town of Apex

EFFECTIVE DATES OF AGREEMENT:

START: Upon Full Execution of this Agreement

END: Five (5) years from the date of execution

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 Apex, hereinafter referred to as the **Municipality**; and collectively referred to as the **Parties**.

The **Parties** to this Agreement, listed above, intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement, represents the entire understanding between the **Parties** with respect to its subject matter and supersedes any previous communication or agreements that may exist.

I. WHEREAS STATEMENTS

WHEREAS, this Agreement is made under the authority granted to the **Department** by NCGS 136-66.1, “Responsibilities for Streets inside Municipalities:” and,

WHEREAS, the **Municipality** wishes to perform “routine” and “clean-up” mowing of vegetation within its jurisdiction in the rights-of-way of certain State maintained routes; and,

WHEREAS, the **Municipality** has agreed to perform said mowing with reimbursement from the **Department** subject to the conditions hereinafter set forth,

NOW, THEREFORE, in consideration of the premises and the benefits accruing to the Department and the **Municipality** as the result of the provision of mowing services, the parties agree as follows:

II. SCOPE

A. MUNICIPALITY REQUIREMENTS

- i. The **Municipality** shall provide the personnel, equipment, labor, materials, and traffic control devices to perform mowing services in accordance with Departmental standards and specifications. The mowing will be performed on the routes and at the costs specified in Attachment A. The routes and/or costs may be amended annually for five (5) years, with additions or changes as mutually agreed upon by both parties in writing prior to performing the work for each year as described herein.
- ii. All work shall be performed in accordance with generally accepted horticultural practices and the **Department’s** routine maintenance mowing requirements set by the Division Engineer. The Division Engineer may approve any requests for changes to NCDOT mowing requirements including but not limited to mowing time frames, mowing heights, mowing equipment, etc.
- iii. The **Municipality** agrees to provide traffic control devices, lane closures, road closures, positive protection and/or any other warning or positive protection devices necessary for the safety of road users during performance of the work, including any construction and subsequent maintenance. This work shall be performed in conformance with the latest NCDOT Roadway Standard Drawings and Standard Specifications for Road and Structures and Amendments or Supplements thereto. Information regarding these rules and regulations may be obtained from the **Department’s** Division Engineer.

III. TIMEFRAME

A. DURATION

- i. This Agreement may be renewed every year for 5 years, subject to the provisions herein and upon written mutual consent. Yearly renewals are subject to the following termination conditions:
 1. At any time either party may cancel the Agreement with a thirty (30) day written notice to the opposite party. On behalf of the **Municipality**, this Agreement may be canceled by the Town Manager and/or his designee.
 2. Upon the effective date of the cancellation, neither party shall owe any obligations under this Agreement, except that all obligations performed under this Agreement, including but not limited to invoicing, record retention, and payment for work performed prior to the effective date of cancellation, shall remain in effect.
- ii. The Division Engineer shall notify the **Municipality** at the beginning of the annual performance period or as soon thereafter, of the amount of allocated funds estimated to be available to the **Municipality** for mowing maintenance on the locations identified. The available allocation shall be based upon and shall not exceed the estimated cost of the work as if performed by the **Department**.

IV. REIMBURSEMENT

A. ALLOCATED FUNDS

If the **Municipality** desires to continue the mowing services during the 5-year period described in this Agreement, the **Municipality** and the **Department** may re-negotiate the costs and revise mowing locations as described below:

- i. The Division Engineer shall notify the **Municipality** in writing through a letter or invoice at the beginning of the annual performance period of the amount of allocated funds estimated to be available to the **Municipality** for mowing maintenance.
- ii. The **Department**, at its option, may elect to increase or decrease the reimbursement rates each year the Agreement is in force in consideration of inflation rates, cost increases and decreases, changes in funding, etc., subject to the availability of funds and the performance of the **Municipality**.

B. INVOICING THE DEPARTMENT

- i. For work performed by the **Municipality's** own forces, the **Municipality** shall submit an itemized invoice of costs expended to the **Department** upon completion of the work. Reimbursement shall be made upon approval of said invoice by the **Department's**

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Division Engineer and Financial Management Division. Any additional cost beyond the approved amount will be the **Municipality's** responsibility.

- ii. For work performed by a contractor, the **Municipality** shall submit an invoice that includes the contractor's invoice to the **Municipality**. Reimbursement shall be made upon approval of said invoice by the **Department's** Division Engineer and Financial Management Division. No advertisement shall be made, nor any contract be entered into for services to be performed as part of this Agreement without prior written approval of the advertisement or contents of the contract by the **Department**. Failure to comply with these requirements will result in funding being withheld until such time as these requirements are met.
- iii. The **Municipality**, and or its agent, shall maintain adequate records and documentation to support the work performed under this Agreement and shall permit free access to its records by official representatives of the State of North Carolina. Furthermore, the **Municipality**, or its agent, shall maintain all pertinent records and documentation for a period of not less than five (5) years following the close of the fiscal year during which the services were performed.

V. ADDITIONAL PROVISIONS

A. ENVIRONMENTAL REGULATIONS

The **Municipality** shall comply with all applicable federal, state, and local environmental regulations, and shall obtain all necessary federal, state and local environmental permits, including but not limited to, those related to sediment control, storm water, wetland, streams, endangered species, and historical sites.

B. PARTICIPATION BY DISADVANTAGED BUSINESSES

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Minority Businesses, Women Businesses, or Small Professional Services Firms (SPSF) as required by G.S. 136-28.4 and the North Carolina Administrative Code. The **Department** will provide the appropriate provisions to be contained in those contracts.

C. AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all Parties by means of a written Supplemental Agreement.

D. ASSIGNMENT OF RESPONSIBILITIES

The **Department** must approve any assignment or transfer of the responsibilities of the **Municipality** set forth in this Agreement to other parties or entities.

E. AGREEMENT FOR IDENTIFIED PARTIES ONLY

This Agreement is solely for the benefit of the identified Parties to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

F. OTHER AGREEMENTS

The **Municipality** is solely responsible for all agreements, contracts, and work orders entered into or issued by the **Municipality** to meet the terms of this Agreement. The **Department** is not responsible for any expenses or obligations incurred for the terms of this Agreement except those specifically eligible for the funds and obligations as approved by the **Department** under the terms of this Agreement.

G. TITLE VI

The other party to this Agreement shall comply with Title VI of the Civil Rights Act of 1964 (Title 49 CFR, Subtitle A, Part 21) and related nondiscrimination authorities. Title VI and related authorities prohibit discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

H. FACSIMILE

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.

I. AUTHORIZATION TO EXECUTE

The Parties hereby acknowledge that the individual executing this Agreement has read this Agreement, conferred with legal counsel, fully understands its contents, and is authorized to execute this Agreement and to bind the respective Parties to the terms contained herein.

J. DEBARMENT POLICY

It is the policy of the **Department** not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the **Municipality** certifies 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 Agency or **Department** and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

K. INDEMNIFICATION

To the extent authorized by state and federal claims statutes, the **Municipality** shall be responsible for its actions under the terms of this agreement and save harmless the FHWA (if

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applicable), the **Department**, and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns to the extent allowed by law, from and against any and all claim for payment, damages and/or liabilities of any nature, asserted against the **Department** in connection with this Agreement. The **Department** shall not be liable and shall be held harmless from any and all third-party claims that might arise on account of the **Municipality's** negligence and/or responsibilities under the terms of this agreement.

L. AVAILABILITY OF FUNDS

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.

M. DOCUSIGN

The **Department** and **Municipality** acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the **Department** or **Municipality**, to execute this Agreement. By selecting "I Agree", "I Accept", or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, the **Department** and **Municipality** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes the **Department's** signature as if actually signed by the **Department** in writing or **Municipality's** signature as if actually signed by **Municipality** in writing. The **Department** and **Municipality** also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. The **Department** and **Municipality** acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

N. GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 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, Adult Corrections, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

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

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SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, on the part of the **Department** and the **Municipality** by authority duly given.

(DOCUSIGN ONLY)

Authorized Signer: _____

Print Name: _____

Title: _____

Date Signed: _____

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

TOWN OF APEX

FED TAX ID NO: _____

Finance Officer: _____

REMITTANCE ADDRESS:

Print Name: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION

BY: _____

TITLE: _____

DATE: _____

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

**Town of Apex
2023**

Attachment A

SECTION NUMBER	ROUTE NAME	FROM	TO	SHOULDER MILES	Divided (x4)/ Undivided (x2)	CLEAN UP MOWING COST per cycle	TOTAL CLEAN UP MOWING COST
SECONDARY							X ~ 5
1	Center St	Waterford Green Dr	Bridge	0.31	Undivided	\$12.25	\$61.23
2	S. Hughes St	Estate Dr	Perry Rd	0.17	Undivided	\$6.72	\$33.58
3	Laura Duncan Rd	Apex Peakway	Old Raleigh Rd	0.57	Undivided	\$22.52	\$112.58
4	Perry Rd	Hughes St	American Way	0.29	Undivided	\$11.46	\$57.28
5	S. Salem St	E. Williams St	Apex Peakway	1.59	Undivided	\$62.81	\$314.03
6	Ten-Ten Rd	Bridge	Lufkin Rd	0.28	Undivided	\$11.06	\$55.30
7	Tingen Rd	S. Salem St	Railroad Crossing	0.20	Undivided	\$7.90	\$39.50
8	Williams St	US 64	Grass Median	8.82	Undivided	\$348.39	\$1,741.95
12	Williams St	Old Jenks Rd	US 64	1.80	Undivided	\$71.10	\$355.50
TOTAL SECONDARY				14.0		\$554.19	\$2,770.93
PRIMARY							
33	NC 55	Old Smithfield Rd	Grass Median	4.01	Divided	\$407.02	\$2,035.08
34	US 1	Welcome to Apex sign	Bridge	2.30	Divided	\$233.45	\$1,167.25
35	US 64	55 Bridge	Autopark Blvd	13.47	Divided	\$1,367.21	\$6,836.03
36	US 64	Flying Hawk Rd	55 Bridge	13.67	Divided	\$1,387.51	\$6,937.53
TOTAL PRIMARY				33.5		\$3,395.18	\$16,975.88
TOTALS				47.5		\$3,949.36	\$19,746.80
						CLEAN UP MOWING TOTAL COST	\$19,746.80
UNIT COST (\$/shoulder mile)				UNIT COST (\$/shoulder mile)			
SECONDARY CLEAN UP UNDIVIDED MOWING COST		\$39.50		PRIMARY CLEAN UP UNDIVIDED MOWING COST		\$50.00	
SECONDARY CLEAN UP DIVIDED MOWING COST		\$101.50		PRIMARY CLEAN UP DIVIDED MOWING COST		\$101.50	