

NORTH CAROLINA

**NCDOT ADMINISTERED – TRANSIT-ORIENTED  
DEVELOPMENT PLANNING**

WAKE COUNTY

DATE: 4/9/2021

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

AND

WBS Elements: 49619.1.1.6

TOWN OF APEX

THIS MUNICIPAL 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”.

WITNESSETH:

WHEREAS, the Department’s Integrated Mobility Division (IMD) has been awarded a Federal Transit Administration (FTA) Grant up to a maximum award amount of \$900,000 for the 2020 Pilot Program for Transit-Oriented Development (TOD) along the S-line corridor; and

WHEREAS, the Department has allocated state matching funds to augment the federal funds available for these activities; and

WHEREAS, the Department has coordinated with participating municipalities to leverage funding; and,

WHEREAS, the Municipality has agreed to participate in the cost of the project as hereinafter set out; 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 applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation;

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 a planning study that will complete transit-oriented development (TOD) planning activities near potential passenger rail station areas along the S-Line corridor. The study will seek to encourage TOD, leverage public investment in commuter and passenger rail, augment safety/economic development efforts of the USDOT ROUTES initiative and maximize opportunities for value capture.

## **RESPONSIBILITIES**

2. The Department will
  - Procure a consultant to develop the study and administer the contract and associated funding.
  - Convene stakeholders to address challenges of coordination, building consensus and forming a shared corridor vision among multiple jurisdictions.
  - Establish a Project governance committee to assist with development of scope, consultant information gathering activities and review of deliverables.
3. The Municipality shall
  - Have a formal role on the Project governance committee.
  - Actively participate in critical study decisions, help to build corridor consensus and provide review of deliverables.
  - Participate in funding per Provision #8.

## **PROJECT DOCUMENTS / DELIVERABLES**

4. The Department anticipates the following Project Deliverables. Said list may be amended at the request of the Project governance committee:
  - Project Management Plan
  - Community Engagement
  - Information Gathering and Review of Existing Conditions
  - Corridor-Wide Market Study
  - Vision Summary
  - Implementation Plan

- Comprehensive TOD Plan
5. All documents, including digital files, will become the property of the Department. Any and all original graphics, technical drawings, photographs, maps, GIS files, and promotional items produced for the plan or for any public meetings shall be available for use by the Department in other publications, on the IMD website and for display purposes. The Department shall be credited for its participation in all documents, publicity, announcements, and materials prepared for/by the municipality for public meetings.
  6. The Municipality shall receive digital files and hard copies of the approved Study. The Municipality shall be responsible for the distribution of the final documents to the appropriate local agencies and interested parties.

#### **TIME FRAMES**

7. The Department anticipates project completion within two years of agreement execution. The period of performance for the FTA funds extends to March 2025. It is important that the Municipality provide necessary support and responses to the Department in a timely manner. Any delays on the part of the Municipality may affect the ability of the Department to provide financial support for the Project.

#### **FUNDING**

8. The estimated cost of the Project is \$1,505,000. The Municipality shall participate in a maximum amount of \$40,000. The Municipality shall submit a check for \$40,000 to the Department upon **partial execution** of this Agreement. Upon completion of the Project, if actual costs exceed \$1,505,000, the Department will be responsible for the overrun. If the actual cost of Project is less than the estimated cost, then the Department will return any overpayment to the Municipality.

#### **ADDITIONAL PROVISIONS**

9. The Department shall not be liable and shall be held harmless from any and all claims that might arise on account of the Municipality negligence and/or responsibilities under the terms of this agreement and/or project.
10. 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.

11. If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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 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 Municipality by authority duly given.

ATTEST: Town of Apex  
BY: \_\_\_\_\_ BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_  
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.

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

\_\_\_\_\_  
(FINANCE OFFICER)

(SEAL)

Federal Tax Identification Number  
\_\_\_\_\_

Remittance Address:  
Town of Apex  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF TRANSPORTATION  
BY: \_\_\_\_\_  
(DEPUTY SECRETARY FOR MULTIMODAL  
TRANSPORTATION)

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

PRESENTED TO BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_