

AGREEMENT OVERVIEW

NORTH CAROLINA
HENDERSON COUNTY

DATE: 5/11/2026

PARTIES TO THE AGREEMENT:

PROJECT NUMBERS:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

TIP #: BL-0008

WBS ELEMENTS: CON 49463.3.1

AND

CITY OF HENDERSONVILLE

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”): This Project consists of construction of the Clear Creek Greenway at SR 1508 (Balfour Road) to SR 1518 (Lakewood Road).

ESTIMATED COST OF THE PROJECT: \$ 4,531,000.00
ESTIMATED COSTS TO OTHER PARTY: \$ 906,200.00 (20%)
ESTIMATED COSTS TO DEPARTMENT: \$ 3,624,800.00 (80%)

RESPONSIBILITY FOR COSTS THAT EXCEED FUNDING:

The City of Hendersonville is responsible for all costs that exceed total estimated cost.

PAYMENT TERMS: The City of Hendersonville will submit payment upon execution of agreement.

MAINTENANCE: City of Hendersonville

EFFECTIVE DATES OF AGREEMENT:

START: Upon Full Execution of this Agreement

END: When work is complete and all terms are met.

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 Hendersonville, 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 the North Carolina General Assembly under General Statutes of North Carolina (NCGS), particularly Chapter 136-66.1 and 136-66.3; and,

WHEREAS, the **Department** and the **Municipality** have agreed that the jurisdictional limits of the **Parties**, as of the date of entering the agreement for 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, the **Department** and the **Municipality** on July 19, 2021, entered into a certain Project Agreement for preliminary engineering work associated with TIP BL-0008, agreement number 9903, programmed under Project WBS: 49463.1.1; and,

NOW, THEREFORE, 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:

II. RESPONSIBILITIES

A. DEPARTMENT

The **Department** shall be responsible for the following phases of project delivery: letting and construction, as shown in the **PROJECT DELIVERY REQUIREMENTS** Provision.

B. MUNICIPALITY

The **Municipality** shall be responsible for maintenance as shown in the **PROJECT DELIVERY REQUIREMENTS** Provision and payment as shown in the **COSTS AND FUNDING** Provision.

III. PROJECT DELIVERY REQUIREMENTS

A. CONSTRUCTION

- i. The **Department** will be responsible for letting the Project to construction.
- ii. The **Department** shall construct the Project in accordance with the plans and specifications for the Project. The **Department** shall administer the construction contract for said Project. All work shall be done in accordance with Departmental standards, specifications, policies, and procedures.

B. RIGHT OF WAY ACQUISITION

The **Municipality** has acquired the needed right of way required for the Project in accordance with the policies and procedures set forth in the North Carolina Right of Way Manual.

C. MUNICIPAL UTILITY RELOCATIONS

Responsibilities

It is understood that there are no municipally-owned water and sewer lines to be adjusted or relocated at this time. If during the project it becomes necessary to adjust or relocate municipally-owned water and/or sewer lines, a separate Utility Agreement will be prepared at the appropriate time.

D. MAINTENANCE

Upon completion of the Project:

- i. The **Municipality** shall be responsible for maintaining the greenway.
- ii. The **Department** shall be responsible for all traffic operating controls and devices which shall be established, enforced, and installed and maintained within the **Department's** right of way 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 Highway," and department criteria.
- iii. The roadway improvements that are within state-owned right of way shall be considered a part of the State Highway System and shall be owned and maintained by the **Department**.

IV. COSTS AND FUNDING

A. PROJECT COSTS AND FUNDING

The **Municipality** has agreed to participate in Project costs as follows:

- i. The estimated cost of the Project is \$4,531,000.00. Both **Parties** understand that this is an estimated cost and is subject to change.
- ii. The **Municipality** shall participate in 20% of Project Costs. The **Department** will participate in 80% of Project Costs. The **Municipality** is responsible for all costs that exceed the estimated costs.
- iii. The **Department** may consult with the **Municipality** on changes to cost estimates prior to construction, or changes to costs during construction. Consultation between the

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Department and the **Municipality** is offered as a courtesy to apprise the **Municipality** of potential cost increases and to allow appropriate budgeting. Failure of the **Department** to notify the **Municipality** of cost increases does not affect the payment terms of the agreement.

B. PAYMENT BY THE MUNICIPALITY

- i. Based on the estimated cost of \$4,531,000.00 the **Municipality** shall submit payment for \$906,200.00 to the **Department's** Fiscal Section upon full execution of this Agreement in accordance with the attached "Remittance Guidance".
- ii. If costs for the current phase of work exceed the available funding, then the **Department** will notify the **Municipality** of any additional down payment needed.
- iii. Upon completion of the Project, if actual costs of the Project exceeds the amount of the down payment, the **Municipality** shall reimburse the **Department** any underpayment within sixty (60) days of invoicing by the **Department**. The **Department** will charge a late payment penalty and interest on any unpaid balance due in accordance with G. S. 147-86.23. If the actual cost of the work is less than \$4,531,000.00, the **Department** will reimburse the **Municipality** any overpayment.

V. STANDARD PROVISIONS

A. 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. INDEMNIFICATION

The **Municipality** will indemnify and hold harmless the FHWA (if applicable), the **Department** and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claims for damage and/or liability, including those that may be initiated by third parties, in connection with the Project activities performed pursuant to this Agreement including construction of the Project, except for those claims arising out of the errors, omissions, or negligence of the **Department**, its respective officers, directors, principals, employees, agents, successors, and assigns.

I. 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.

J. COUNTERPARTS AND ELECTRONIC SIGNATURES

i. This Agreement, and other documents to be delivered pursuant to this Agreement, may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document and will be effective when counterparts have been signed by each of the **Parties**. An image of a manual signature on this Agreement, or other documents

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to be delivered pursuant to this Agreement, will constitute an original signature for all purposes. The delivery of copies of this Agreement or other documents to be delivered pursuant to this Agreement, including executed signature pages where required, by electronic transmission will constitute effective delivery of this Agreement or such other document for all purposes.

- ii. The **Parties** hereto further acknowledge and agree that this Agreement may be signed and/or transmitted by email or a PDF document or using electronic signature technology (e.g. DocuSign, Adobe Sign, or other electronic signature technology), and that such signed record shall be valid and as effective to bind the **Party(ies)** so signing as a paper copy bearing a handwritten signature. 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 electronic signature technology, the **Parties** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes a signature as if actually signed in writing. The **Parties** 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 **Parties** acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the electronic signature technology, will have the same effect as physical delivery of the paper document bearing an original written signature.

K. 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).

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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)

CITY OF HENDERSONVILLE

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:

Fed Tax ID No: _____

Finance Signer: _____

Remittance Address:

Print Name: _____

Title: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION

By: _____

Print Name: _____

Title: _____

Date: _____

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

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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.

(INK SIGNATURES)

CITY OF HENDERSONVILLE

Attest: _____ Authorized Signer: _____
By: _____ Print Name: _____
Title: _____ Title: _____
Date Signed: _____

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

Fed Tax ID No: _____ Finance Signer: _____
Remittance Address: _____ Print Name: _____
_____ Title: _____
_____ Date Signed: _____

(DOCUSIGN)

DEPARTMENT OF TRANSPORTATION

By: _____
Print Name: _____
Title: _____
Date: _____

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