



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

EUGENE A. CONTI, JR.
SECRETARY

April 5, 2012

Mr. Cliff Ogburn, Town Manager
Town of Nags Head
P. O. Box 99
Nags Head, NC 27959

Re: Landscape Agreement
Planting of Trees, Shrubs and Perennials along US 158 and NC 12 in Nags Head
WBS Element: 3701.3.17

Dear Mr. Ogburn,

Enclosed are duplicate originals of a reimbursable agreement for the subject project. Please have the appropriate official sign both originals and return to this office for execution by the Department.

Should you have questions, please let us know.

Sincerely,

J. D. Jennings, PE
Division Engineer – Division One

A handwritten signature in black ink, appearing to read "W. B. Hobbs".

W. B. Hobbs, PE
Division Project Manager

JDJ/WBH

Attachments

cc: P. P. Mansfield

NORTH CAROLINA

LANDSCAPE AGREEMENT

DARE COUNTY

DATE: 2/19/2012

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

Project: ER-2973 A

AND

WBS Elements: 3701.3.17

CFDA: 20.205

TOWN OF NAGS HEAD

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 Nags Head, a municipal corporation, hereinafter referred to as the "Municipality."

WITNESSETH:

WHEREAS, Section 1113 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA – LU), requires that the Surface Transportation Program funds be available for transportation enhancement activities in the Statewide Transportation Improvement Program; and,

WHEREAS, the Municipality has requested enhancement funding for certain landscape plantings in Dare County; and,

WHEREAS, the Department and the Municipality have also agreed to the maintenance of said plantings as hereinafter set out;

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:

GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

PERSON IN RESPONSIBLE CHARGE

If the Municipality is performing the work under this Agreement, then the Municipality shall designate a person, or persons, to be in responsible charge of the Project, in accordance with Title 23 of the Code of Federal Regulations, Part 635.105. The person, or persons, shall be expected to:

- Administer governmental project activities, including those dealing with cost, time, adherence to contract requirements, construction quality and scope of Federal-aid projects;
- Maintain knowledge of day to day project operations and safety issues;
- Make or participate in decisions about changed conditions or scope changes that require change orders or supplemental agreements;
- Visit and review the project in accordance with the project scope and scale;
- Review financial processes, transactions and documentation to reduce the likelihood of fraud, waste, and abuse;
- Direct project staff, agency or consultant, to carry out project administration and contract oversight, including proper documentation; and
- Be aware of the qualifications, assignments and on-the-job performance of the agency and consultant staff at all stages of the project.

The person in responsible charge must be a full-time employee of the Municipality, but the duties may be split among several employees, if necessary.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

SCOPE OF THE PROJECT

1. The Project consists of the planting of shrubs and perennials around the "Welcome to Whalebone Community" sign as well as the planting of Coastal Cedar and Live Oak trees along US 158 and NC 12 in Dare County.

PLANNING AND DESIGN

2. The Department shall, without expense to the Municipality, approve the landscape design and prepare the landscape plans and specifications in accordance with the Department's standard landscaping policies and procedures for highways. The Municipality shall have an opportunity to review the landscape design and plans before the Department lets the contract.

RIGHT OF WAY AND UTILITIES

3. All work shall be performed within the existing right of way and in accordance with Departmental standards, policies and procedures. In the event any additional right of way or construction easement is required for the plantings, the Municipality shall provide said additional right of way/or easement at no expense or liability whatsoever to the Department. Acquisition of all right of way and/or construction easements shall be in accordance with all State and Federal procedures. The Municipality shall be solely responsible for all damages and claims for damages associated with the acquisition of right of way.
4. The Municipality, at no expense to the Department, shall be responsible for the relocation and adjustment of all utilities in conflict with the landscape planting.

CONSTRUCTION AND MAINTENANCE

5. The Department shall furnish the plants and mulch for the initial planting. The Department shall, without expense to the Municipality, prepare the site and install the plantings, or have the plantings installed by contract, in accordance with the approved project plans. All work shall be

performed in accordance with the Department's standard landscaping policies and procedures for highways. Upon completion of the planting, the Department shall maintain said planting areas for a three-year warranty period, at no expense to the Municipality.

6. Upon completion of the three-year warranty period, the Department shall notify the Municipality, in writing, when the Municipality should assume responsibility for all maintenance and replacement of the landscape materials. Maintenance shall include, but not be limited to, the following: watering, mulching, pruning, fertilizing, weeding, pest control, mowing, and replacing plant materials. All cost of maintenance shall be borne by the Municipality.
7. The Municipality agrees to continually maintain all plantings in accordance with generally accepted horticultural practices. The Department shall have the right to periodically inspect the maintenance practices being utilized by the Municipality.
8. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment 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 North Carolina General Statute, Section 136-41.1, until such time as the Department has received payment in full.
9. If the Department determines that the Municipality is not properly maintaining the plantings, the Department shall notify the Municipality. If proper maintenance is not performed by the Municipality within a reasonable time after notification, the Municipality agrees that the Department shall perform the necessary maintenance, or at the Department's option, shall return the planted area to a natural condition (i.e. seeded and mulched, etc.). It is further agreed that the costs of the restoration shall be reimbursed to the Department by the Municipality. Reimbursement to the Department shall be made in one final payment within sixty (60) days of invoicing by the Department. The Department shall charge a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147.86.23.
10. In the event these plantings require relocation or removal for highway construction, re-construction, maintenance or safety, the Municipality shall be given the option to remove or relocate any plantings it considers salvageable immediately upon notification by the Department, at no expense to the Department.

11. After the Town assumes responsibility for maintenance of the plantings at the end of the three year warranty period, the Department shall not be responsible for any damage to the plantings which may be done by third parties.

FUNDING

12. Subject to compliance by the Municipality with the provisions set forth in this Agreement, and the availability of federal funds, the Department shall have the plantings installed and provide a three-year warranty period at no cost to the Municipality. Estimated cost of installation and warranty is \$75,000.

ADDITIONAL PROVISIONS

13. The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

14. It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement

15. It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (Federal or State). The Municipality certifies, by signature of this agreement, 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 Department or Agency.

16. The Municipality shall certify to the Department compliance with all applicable Federal and State 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.

17. The Municipality will indemnify and hold harmless the Department, FHWA, 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 in connection with the

project activities performed pursuant to this Agreement including construction of the Project. The Department shall not be responsible for any damages or claims for damages, which may be initiated by third parties.

18. 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.

19. If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

20. 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).

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.

WITNESS:

TOWN OF NAGS HEAD

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.

Approved by _____ of the local governing body of the Town of Nags Head as attested to by the signature of Clerk _____ of said governing body 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:

Town of Nags Head

DEPARTMENT OF TRANSPORTATION

BY: _____
(STATE HIGHWAY ADMINISTRATOR)

DATE: _____

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