

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: November 6, 2023

SUBJECT: Supplemental Agreement with NCDOT for STBG Funds to be used for Ecusta Trail West PE

PRESENTER: Christopher Todd, Business and Community Development Director
Autumn Radcliff, Planning Director

ATTACHMENTS: 1. Supplemental Agreement

SUMMARY OF REQUEST:

In 2022, the County successfully secured over \$10.4 million in STBG-DA (Surface Transportation Block Grant – Direct Attributable) for the construction of Ecusta Trail West (US 64 in Horseshoe to the county line). In 2023, the RAISE grant was awarded for construction and PE of the Ecusta Trail. To prevent delays in engineering designs and construction, a portion of the STBG-DA funds is being reallocated to begin PE of the Ecusta West design and permitting. This will allow the previous approved RAISE funds and NSFLTP funds to be used for construction.

A supplemental agreement with NCDOT is required for Henderson County to access these funds for the Ecusta West PE. The STBG has a required 20% local match that will come from other funding sources including fundraising, TDA, and other grant sources. The total STBG-DA funds to be allocated are \$1,440,000.

BOARD ACTION REQUESTED:

The Board is requested to approve the supplemental agreement with NCDOT to access STBG-DA funds to be used for the PE on the Ecusta Trail West.

Suggested Motion:

I move the Board authorize the County Engineer to sign the supplemental agreement with NCDOT to access allocated funding from STBG-DA to be used for PE on the Ecusta Trail West.

AGREEMENT OVERVIEW

NORTH CAROLINA
HENDERSON COUNTY

DATE: 10/24/2023

PARTIES TO THE AGREEMENT:

PROJECT NUMBERS:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

TIP #: BL-0078
WBS ELEMENTS: PE 50817.1.1

AND

HENDERSON COUNTY

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 TIP PROJECT (“Project”): Design, Engineer and Environmental Documents and Permits for Section from Transylvania Line to Horse Shoe for the Ecusta Trail.

ESTIMATED COST OF THE WORK: \$1,800,000

COSTS TO OTHER PARTY: \$360,000

PAYMENT TERMS: Henderson County will submit payment upon execution of agreement.

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 **Henderson County**, hereinafter referred to as the **County**; 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 **County** 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 **County** has requested that the **Department** perform preliminary engineering of said work or provide services; and,

WHEREAS, the **Parties** hereto wish to enter into an agreement for scoped work to be performed or provided by the **Department** (including reviews, goods, or services) with reimbursement for the costs thereof by the **County** as hereinafter set out; 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

- i. The **Department** shall be responsible for planning and design as shown in the **PROJECT DELIVERY** Provision.
- ii. The **County** shall be responsible for payment as shown in the **COSTS AND FUNDING** Provision.

III. PROJECT DELIVERY REQUIREMENTS

A. PRELIMINARY ENGINEERING

The **Department** will prepare plans for the additional work requested by the **County**. The **Department** will be responsible for entering into any contracts or agreements with professional engineering firms (PEFs) to perform said planning and design. All work shall be performed in accordance with the **Department's** policies, procedures, standards, and specifications, and the provisions of this Agreement.

IV. COSTS AND FUNDING

A. PROJECT COSTS

- i. The **County** shall be responsible for 20% of the actual costs of the Preliminary Engineering design plans. The estimated cost to the County is \$360,000. It is understood by both the **Department** and the **County** that this is an estimated cost for Preliminary Engineering.

B. INVOICING BY THE DEPARTMENT

- i. Upon completion of the design phase, the **Department** will invoice the **County** for their share of the actual costs of the preliminary engineering for work requested by the **County**. The **County** shall reimburse the **Department** 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.
- ii. In the event the **County** 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 **County's** share of funds allocated to said **County** by North Carolina General Statute, Section 136-41.1, until such time as the **Department** has received payment in full.

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 **County** 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 **County** is solely responsible for all agreements, contracts, and work orders entered into or issued by the **County** 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. 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.

G. 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.

H. 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 **County** 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.

I. INDEMNIFICATION

To the extent authorized by state and federal claims statutes, the **County** shall be responsible for its actions under the terms of this agreement and save harmless the FHWA (if 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 **County's** negligence and/or responsibilities under the terms of this agreement.

J. 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.

K. DOCUSIGN

The **Department** and **County** acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the **Department** or the **County**, 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 **County** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes **Department's** signature as if actually signed by the **Department** in writing or the **County's** signature as if actually signed by the **County** in writing. The **Department** and **County** 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 **County** 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.

L. 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).

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 **County** 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:

HENDERSON COUNTY

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)

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 **County** by authority duly given.

(INK SIGNATURES ONLY)

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:

HENDERSON COUNTY

FED TAX ID NO: _____ Finance Officer: _____

REMITTANCE ADDRESS: _____ Print Name: _____

_____ Date Signed: _____

DEPARTMENT OF TRANSPORTATION (DocuSign)

BY: _____

TITLE: _____

DATE: _____

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