



## Briefing Sheet

Version Number: 1

**Lead Department:** Planning      **Action Officer:** Benjamin Howell, Transportation Planner

**Subject:** Approval of NCDOT Local Agreements for Cary Parkway and NC 54 Sidewalks

**Briefing:** 10/28/2014      **Public Hearing:** None      **Action:** 10/28/2014

Item Schedule	Select One
<b>Schedule 1:</b> <i>Brief twice – vote once (six weeks)</i>	<input type="checkbox"/>
<b>Schedule 2:</b> <i>Brief once – vote once (two weeks)</i>	<input type="checkbox"/>
<b>Schedule 3:</b> <i>No briefing required (one week)</i>	<input checked="" type="checkbox"/>

### Updates/History of Briefing:

NOT APPLICABLE

### Executive Summary and Background Information:

Town staff worked with the NC Department of Transportation Division 5 office on potential funding for several missing sidewalk segments in Town – two segments on NC 54 and one segment on Cary Parkway. NCDOT staff has provided Enhancement funding, which will fund the construction costs for these sidewalk segments. This briefing asks the Town Council to authorize the Town Manager to sign the required Local Agreements with NCDOT to receive these funds.

In discussions with NCDOT staff about missing sidewalk segments in Town, it was brought to staff's attention that there is Enhancement funding available from the Division for construction of sidewalk segments that will fill in gaps in a municipality's sidewalk network. There are two gaps on NC 54 that will be filled in with this funding under one local agreement, and one gap on Cary Parkway that will be completed under a second agreement. The gaps on NC 54 are from Keybridge Drive to the Oaks at Weston Apartments entrance (Henrico Lane) [ATTH 01], and along the frontage of the Mobil gas station on NC 54 north of Morrisville Parkway [ATTH 02]. These funds will also fund construction of a sidewalk on Cary Parkway from the CVS entrance to Sheldon Drive [ATTH 03]. These segments were chosen because the Town has received several requests for sidewalks in these areas, the proposed sidewalks are in high-traffic areas, and they will provide safe access to Park West Village for residents from the Weston Estates neighborhood, the future development on NC 54 at Weston Parkway and the Camden Westwood apartment complex, as well as the Marquis Cary Parkway apartment complex and the residences located on Sheldon Drive.

These funds will provide 100% of the construction costs for these sidewalk segments, currently estimated to be \$97,000 for the NC 54 segments and \$102,000 for the Cary Parkway segment. Any costs above these limits will be required to be borne by the Town. There are existing funds available in the FY2015 budget appropriations to redirect to absorb the project costs. The Town is in the process of completing the engineering and design of these sidewalk segments using town funds and

staff – designing the NC 54 segments internally, and paying an engineering consultant to design the Cary Parkway segment. Since the Enhancement funds received from NCDOT must be used by June 30, 2015, the Town will have to begin construction by March 2015. Due to the tight timeline associated with use of these funds, staff is requesting Council approval the same night this item is briefed.

#### Options:

- Approve the local agreements to provide 100% construction funding for two sidewalk segments on NC 54 and one sidewalk segment on Cary Parkway
- Do not approve the local agreements, and use town funds to construct these sidewalk segments

#### Attachments:

- ATTH 01 – Map of NC 54 sidewalk segment: Keybridge Drive to Henrico Lane
- ATTH 02 – Map of NC 54 sidewalk segment: Mobil gas station near Morrisville Parkway
- ATTH 03 – Map of Cary Parkway sidewalk segment: CVS entrance to Sheldon Drive
- ATTH 04 – NCDOT Local Agreement – NC 54 Sidewalk Segments
- ATTH 05 – NCDOT Local Agreement – Cary Parkway Sidewalk Segment

#### Staff Recommendation:

Staff recommends the Town Council authorize the Town Manager to sign the NCDOT Local Agreements for funding of the construction of sidewalks on NC 54 and Cary Parkway.

#### Advisory Board/Committee Review:

NONE

#### Board/Committee Recommendation:

NOT APPLICABLE

#### Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

#### Meeting Perspectives and Goals Adopted by the Council:

Perspectives	Goals
Serve the Community	<input checked="" type="checkbox"/> Promote an Environmentally Sensitive & Livable Community <input checked="" type="checkbox"/> Provide a Safe Community <input type="checkbox"/> Deliver Quality Services <input checked="" type="checkbox"/> Foster a Healthy Community
Run the Operations	<input type="checkbox"/> Enhance Community Preparedness & Responsiveness <input checked="" type="checkbox"/> Maximize Partnership Opportunities <input type="checkbox"/> Provide Courteous & Responsive Customer Service <input type="checkbox"/> Model a Positive Town Image <input type="checkbox"/> Deliver Efficient Services <input checked="" type="checkbox"/> Cultivate Community Involvement & Access
Manage the Resources	<input type="checkbox"/> Maintain Fiscal Strength <input checked="" type="checkbox"/> Maximize Utilization & Resources <input checked="" type="checkbox"/> Invest in Infrastructure & Transportation
Develop Personnel	<input type="checkbox"/> Develop a Skilled & Diverse Workforce <input type="checkbox"/> Create a Positive & Rewarding Work Culture

#### Perspectives and Goals Additional Comments:

NONE

**Resource Impact:**

Staff time required if item is approved: Medium

**Other Potential Impacts:**

NONE APPLICABLE

**Staff Coordination:**

Check the box for those required to comment on left. To comment-click in the box and select.  
(Update is used when information has significantly changed from the first briefing.)

Required	Staff Member	Briefing	Update
<input checked="" type="checkbox"/>	Town Manager	Agree	No Comment
<input checked="" type="checkbox"/>	Town Clerk	Reviewed	No Comment
<input checked="" type="checkbox"/>	Senior Director Finance and IT Services	Agree	No Comment
<input checked="" type="checkbox"/>	Budget and Analysis Manager	Comment	No Comment
<input type="checkbox"/>	Controller	No Comment	No Comment
<input type="checkbox"/>	Information Technology Director	No Comment	No Comment
<input checked="" type="checkbox"/>	Contracting and Purchasing Manager	Reviewed	No Comment
<input checked="" type="checkbox"/>	Senior Director Development Services	Agree	No Comment
<input checked="" type="checkbox"/>	Planning Director	Agree	No Comment
<input checked="" type="checkbox"/>	Town Engineer	Agree	No Comment
<input type="checkbox"/>	Building Codes Administrator	No Comment	No Comment
<input type="checkbox"/>	Economic Development	No Comment	No Comment
<input checked="" type="checkbox"/>	Senior Director Community Services	Agree	No Comment
<input type="checkbox"/>	Risk Manager/Safety Officer	No Comment	No Comment
<input type="checkbox"/>	Police Chief	No Comment	No Comment
<input type="checkbox"/>	Fire Chief	No Comment	No Comment
<input type="checkbox"/>	Parks & Recreation Director	No Comment	No Comment
<input type="checkbox"/>	Public Works Director	No Comment	No Comment
<input checked="" type="checkbox"/>	Public Information Officer	Reviewed	No Comment
<input checked="" type="checkbox"/>	Town Attorney	Reviewed	No Comment
<input type="checkbox"/>	Human Resources Manager	No Comment	No Comment

Disagree or comment, explain:

Budget – This is a reimbursement type grant requiring the Town to pay-out-of-pocket the full cost of the project initially and submit for reimbursement after the fact.

**Public Information Plan:**

<input type="checkbox"/>	Public Hearing (Required by GS)	<input type="checkbox"/>	Public Hearing (Not Required by GS)
<input type="checkbox"/>	Newspaper Notice (Required by GS)	<input type="checkbox"/>	Newspaper Notice (Not Required by GS)
<input type="checkbox"/>	Public Forum/Input Session	<input type="checkbox"/>	Press Release
<input type="checkbox"/>	Morrisville Connection	<input type="checkbox"/>	E-News Distribution
<input type="checkbox"/>	Social Media (Twitter, Facebook, etc.)	<input type="checkbox"/>	Website Notice
<input type="checkbox"/>	Special Mailing	<input type="checkbox"/>	Banners Posted
<input type="checkbox"/>	Flyers Posted	<input type="checkbox"/>	Survey

<input type="checkbox"/>	Automated Phone Call	<input checked="" type="checkbox"/>	None Required
Other:			



**RESOLUTION 2014-062 OF THE MORRISVILLE TOWN COUNCIL ENTERING INTO  
A LOCAL AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION TO CONSTRUCT TWO SIDEWALK SEGMENTS ALONG NC 54  
AND ONE SIDEWALK SEGMENT ALONG CARY PARKWAY**

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**WHEREAS,** the Town of Morrisville has worked to fill in various sidewalk gaps throughout town to promote walkability and safe non-motorized access to various destinations; and

**WHEREAS,** Town staff determined that there were two such gaps on NC 54 and one on Cary Parkway that would provide safe pedestrian access to Park West Village and surrounding shops and restaurants for several neighborhoods and apartment complexes; and

**WHEREAS,** the NCDOT has Enhancement funds available for use in the current Fiscal year to construct sidewalk segments that fill in gaps in municipalities' sidewalk networks; and

**WHEREAS,** Town staff have worked with NCDOT to receive some of these funds for the construction of two sidewalk segments on NC 54 and one sidewalk segment on Cary Parkway; and

**WHEREAS,** NCDOT will provide the Town \$97,000 for construction of two sidewalk segments on NC 54, between Keybridge Drive and Henrico Lane and along the frontage of the Morrisville Commons development near Morrisville Parkway; and

**WHEREAS,** NCDOT will provide the Town \$102,000 for construction of a sidewalk segment on Cary Parkway between NC 54 and Sheldon Drive; and

**WHEREAS,** these funds will cover 100% of the estimated construction cost of these sidewalk segments:

**NOW, THEREFORE, BE IT RESOLVED THAT THE MORRISVILLE TOWN COUNCIL** hereby authorizes and directs the Town Manager to sign two local agreements with the North Carolina Department of Transportation for the construction of two sidewalk segments on NC 54 and one sidewalk segment on Cary Parkway.

Adopted this the 28th day of October 2014.

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Mark Stohlman, Mayor

ATTEST:

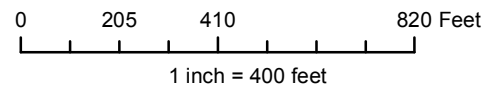
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Diana R. Davis, Town Clerk



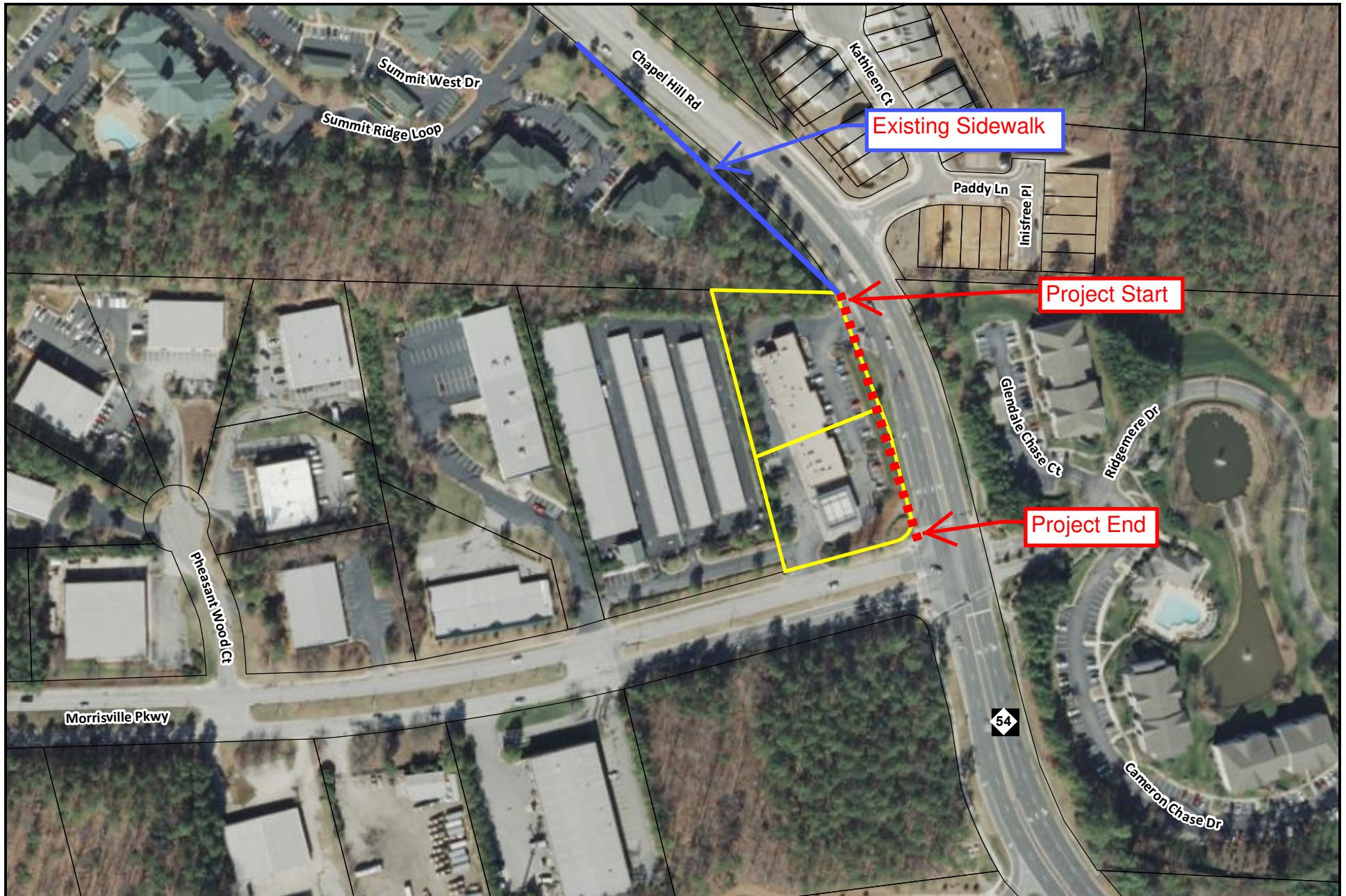


## NC 54 Sidewalk - Keybridge Dr. to Henrico Lane

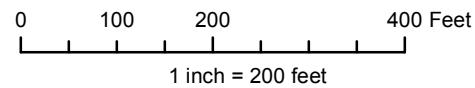


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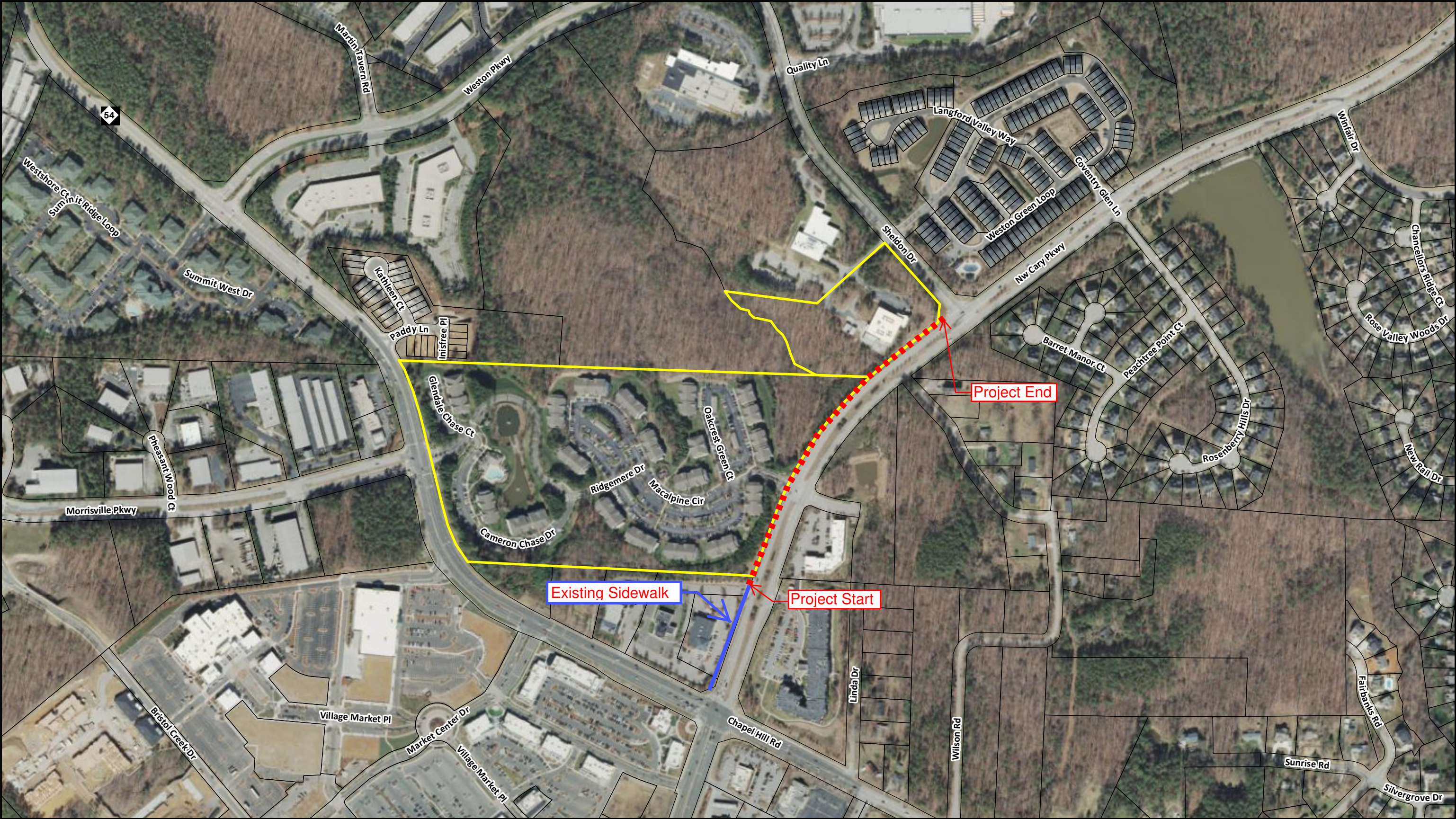


## NC 54 Sidewalk - Mobil Station

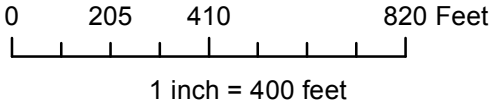


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Cary Pkwy Sidewalk Project



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NORTH CAROLINA

**SIDEWALK AGREEMENT**

WAKE COUNTY

DATE: 9/25/2014

NORTH CAROLINA TRANSPORTATION OF  
TRANSPORTATION

AND

WBS Element: 3605.3.14

TOWN OF MORRISVILLE

CFDA: 20.205

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

**W I T N E S S E T H:**

WHEREAS, Section 1113 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA – LU) requires that 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 the construction of sidewalks in Wake County; and,

WHEREAS, the Department has agreed to participate in the cost of said sidewalks subject to the conditions hereinafter set forth;

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 Pedestrian Enhancement project consisting of two segments of sidewalk on NC 54:

Approximately 400 linear feet of 5-ft wide sidewalk between Keybridge Drive and Henrico Lane (east side of roadway).

Approximately 300 linear feet of 5-ft wide sidewalk between Morrisville Parkway and Summit Ridge Loop (west side of roadway).

## **PROFESSIONAL SERVICES**

2. If the Municipality causes the professional engineering services required by this Agreement to be performed by contracting with a private engineering firm and seeks reimbursement for said services under this agreement, it is agreed as follows:
  - A. The Municipality shall ensure that an engineering firm is obtained through an equitable selection process and that prescribed work is properly accomplished in a timely manner, at a just and reasonable cost.
  - B. The Municipality, when procuring architectural, professional and engineering services, must adhere to North Carolina Department of Transportation Rules and Regulations for Major Professional or Specialized Services Contracts. This policy conforms to N.C.G.S. 143-64, Parts 31 and 32, and Title 23 of the Code of Federal Regulations, Part 172. The Municipality shall comply with the policies and standards for negotiated contracts as contained in the Federal-Aid Policy Guide, Part 172; said policies and standards being incorporated in this Agreement by reference, and currently available at ([www.fhwa.dot.gov/legisregs/legislat.html](http://www.fhwa.dot.gov/legisregs/legislat.html)).
  - C. The Municipality shall submit all professional services contract proposals to the Department for review and approval prior to execution of any professional services contract by the Municipality. In the event that the professional services contract proposal (engineering) exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.

- D. Reimbursement for construction administration costs cannot exceed fifteen percent (15%) of the total construction cost. This applies to private engineering firms and/or work performed by the Municipality and/or the Department. The Municipality and/or its agent, shall perform project administration in accordance with all Departmental and Federal policies and procedures.

## **PLANNING AND DESIGN**

- 3. The Municipality, shall be responsible for the preparation of all environmental documentation (Categorical Exclusion), including any environmental permits, required for said project. All work shall be accomplished in accordance with Departmental and Federal procedures and guidelines.
- 4. The Municipality shall be responsible for the development of the design and preparation of project plans specifications, quantities and details for said project. Said work shall be accomplished in accordance with Departmental and Federal standards and specifications and submitted to the Department for review and approval prior to any work being performed by the Municipality.

## **UTILITIES AND RIGHT OF WAY**

- 5. The Municipality at no expense or liability whatsoever to the Department, shall relocate and adjust all utilities in conflict with the project, and provide and/or acquire any needed right of way or construction easements for said project. Acquisition of all right of way and/or construction easements shall be in accordance with the Right of Way Acquisition Policy contained in the Federal-Aid Policy Guide, Part 712, Subpart B; and the North Carolina Department of Transportation Right of Way Manual. The Municipality shall be solely responsible for all damages and claims for damages associated with the acquisition of right of way.

## **CONSTRUCTION**

- 6. The Municipality shall construct, or cause to be constructed, the project in accordance with the project plans and with Departmental and Federal policies and procedures. The Municipality, and/or its agent, shall let the contract and administer the project in accordance with Title 23 of the Code of Federal Regulations, Part 635; and North Carolina General Statute § 143-129; and the procedures set out herein below:
  - A. The Department's Division Engineer, at his discretion, may assign a resident engineer to the project who shall have the right to inspect any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. The resident engineer will be the Department's representative on the project.



The resident engineer will furnish the Municipality with any forms that may be needed in order to follow standard Department practices and procedures in the administration of the contract.

- B. During construction of the project, if any changes in the sidewalk plans are necessary, such changes must be approved by the Division Engineer prior to the work beginning.
- C. All materials incorporated into the project and workmanship performed by the contractor shall be in reasonable close conformity with the Standards and Specifications of the Department.
- D. The Municipality shall not retain any portion of a payment due the contractor.
- E. Prior to the final acceptance and payment by the Department, the Division Engineer shall make a final inspection of the completed work. The Division Engineer will be responsible for final acceptance of the completed work on behalf of the Department.
- F. During construction of the project, the Municipality shall provide and maintain adequate barricades, signs, signal lights, flagmen, and other warning devices for the protection of traffic in conformation with standards and specifications of the Department and the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways* published by the Federal Highway Administration.
- G. The Municipality shall complete said work within one (1) year of execution of this agreement.

## **FUNDING**

- 7. Subject to compliance by the Municipality with the provisions set forth in this Agreement, and the availability of federal funds, the Department shall participate in the actual construction and engineering costs of the project not to exceed \$97,000. Costs which exceed this amount shall be borne by the Municipality.
  - A. Upon completion of the project, the Municipality shall bill the Department for actual construction costs as herein stated by submitting an itemized invoice to the Department's Division Engineer. Reimbursement shall be made in one final payment upon receipt and approval of said itemized invoice by the Division Engineer and the Department's Financial Management Division. Said invoice must be submitted within six months of completion and acceptance of the project.

Along with each invoice, the Municipality is responsible for submitting the FFATA Recipient Information Form, which is available at

<https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

- B. Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than contract awarded by competitive bidding process. Written approval from the Division Engineer is required prior to the use of force account by the Municipality. Said invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in Office of Management and Budget (OMB) Circular A-87 ([http://www.whitehouse.gov/omb/circulars\\_default](http://www.whitehouse.gov/omb/circulars_default)). Reimbursement shall be based on actual cost incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.
- C. In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" ([www.whitehouse.gov/omb/circulars/a133/a133.html](http://www.whitehouse.gov/omb/circulars/a133/a133.html)), dated June 27, 2003, the Federal Single Audit Act Amendments of 1996, and NCGS § 159-34, the Municipality shall arrange for an independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.
- D. The Municipality shall adhere to applicable administrative requirements of Title 49 Code of Federal Regulations, Part 18 ([www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm)) and Office of Management and Budget (OMB) Circulars A-102 ([www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html)) "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at [www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm) and by Office of Management and Budget (OMB) Circular A-87 ([www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html)) "Cost Principles for State, Local, and Indian Tribal Governments." Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.



- E. The Municipality agrees that it shall bear all construction costs for which it is unable to substantiate actual costs.
- F. Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.
- G. Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the project.

## **CONSTRUCTION SUBCONTRACTOR GUIDELINES**

- 8. 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 Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 Part 26 of the Code of Federal Regulations and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference <https://connect.ncdot.gov/municipalities/Pages/Bid-Proposals-for-LGA.aspx>
- A. The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- B. If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

## **MAINTENANCE**

- 9. The Municipality, at its own expense, shall be responsible for all liability and maintenance for said facility.

## **ADDITIONAL PROVISIONS**

- 10. 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.
- 11. 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.

12. The Municipality shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of final payment under this agreement, for inspection and audit by the Department's Financial Management Division.
13. 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.
14. Each of the parties covenants that if it enters into any subcontracts in order to perform any of its obligations under this contract, it shall require that the contractors and their subcontractors comply with the requirements of NC Gen. Stat. Article 2 of Chapter 64. In this E-Verify Compliance section, the words contractors, subcontractors, and comply shall have the meanings intended by N.C. Gen. Stat. § 160A-20.1.
15. The Municipality shall certify to the Department compliance with all applicable Federal environmental 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.
16. The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department shall not be held liable by the Municipality for any expenses or obligations incurred for the Project except those specifically eligible for the federal funds and obligations as approved by the Department under the terms of this Agreement. The Department shall not reimburse the Municipality any costs that exceed the total federal funding at any time.
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. Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, or if the cost of work done by the Department exceed the funding award, the Department will bill the Municipality.
20. 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.
21. 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 that the approval of the project by the Department is subject to the conditions of this Agreement and that no expenditure of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.



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.

L.S. ATTEST:

TOWN OF MORRISVILLE

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 Morrisville

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 Morrisville

DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
(CHIEF ENGINEER)

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

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (DATE)

NORTH CAROLINA

**SIDEWALK AGREEMENT**

WAKE COUNTY

DATE: 9/25/2014

NORTH CAROLINA TRANSPORTATION OF  
TRANSPORTATION

AND

WBS Element: 3605.3.15

TOWN OF MORRISVILLE

CFDA: 20.205

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 Morrisville, 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 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 the construction of sidewalks in Wake County; and,

WHEREAS, the Department has agreed to participate in the cost of said sidewalks subject to the conditions hereinafter set forth;

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 Pedestrian Enhancement project consisting of one segment of sidewalk on Cary Parkway:

Approximately 1,450 linear feet of 5-ft wide sidewalk between NC 54 and Sheldon Drive (north side of roadway).

## **PROFESSIONAL SERVICES**

2. If the Municipality causes the professional engineering services required by this Agreement to be performed by contracting with a private engineering firm and seeks reimbursement for said services under this agreement, it is agreed as follows:
  - A. The Municipality shall ensure that an engineering firm is obtained through an equitable selection process and that prescribed work is properly accomplished in a timely manner, at a just and reasonable cost.
  - B. The Municipality, when procuring architectural, professional and engineering services, must adhere to North Carolina Department of Transportation Rules and Regulations for Major Professional or Specialized Services Contracts. This policy conforms to N.C.G.S. 143-64, Parts 31 and 32, and Title 23 of the Code of Federal Regulations, Part 172. The Municipality shall comply with the policies and standards for negotiated contracts as contained in the Federal-Aid Policy Guide, Part 172; said policies and standards being incorporated in this Agreement by reference, and currently available at ([www.fhwa.dot.gov/legsregs/legislat.html](http://www.fhwa.dot.gov/legsregs/legislat.html)).
  - C. The Municipality shall submit all professional services contract proposals to the Department for review and approval prior to execution of any professional services contract by the Municipality. In the event that the professional services contract proposal (engineering) exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.
  - D. Reimbursement for construction administration costs cannot exceed fifteen percent (15%) of the total construction cost. This applies to private engineering firms and/or work performed by the Municipality and/or the Department. The Municipality and/or its agent, shall perform

project administration in accordance with all Departmental and Federal policies and procedures.

## **PLANNING AND DESIGN**

3. The Municipality, shall be responsible for the preparation of all environmental documentation (Categorical Exclusion), including any environmental permits, required for said project. All work shall be accomplished in accordance with Departmental and Federal procedures and guidelines.
4. The Municipality shall be responsible for the development of the design and preparation of project plans specifications, quantities and details for said project. Said work shall be accomplished in accordance with Departmental and Federal standards and specifications and submitted to the Department for review and approval prior to any work being performed by the Municipality.

## **UTILITIES AND RIGHT OF WAY**

5. The Municipality at no expense or liability whatsoever to the Department, shall relocate and adjust all utilities in conflict with the project, and provide and/or acquire any needed right of way or construction easements for said project. Acquisition of all right of way and/or construction easements shall be in accordance with the Right of Way Acquisition Policy contained in the Federal-Aid Policy Guide, Part 712, Subpart B; and the North Carolina Department of Transportation Right of Way Manual. The Municipality shall be solely responsible for all damages and claims for damages associated with the acquisition of right of way.

## **CONSTRUCTION**

6. The Municipality shall construct, or cause to be constructed, the project in accordance with the project plans and with Departmental and Federal policies and procedures. The Municipality, and/or its agent, shall let the contract and administer the project in accordance with Title 23 of the Code of Federal Regulations, Part 635; and North Carolina General Statute § 143-129; and the procedures set out herein below:
  - A. The Department's Division Engineer, at his discretion, may assign a resident engineer to the project who shall have the right to inspect any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. The resident engineer will be the Department's representative on the project. The resident engineer will furnish the Municipality with any forms that may be needed in order to follow standard Department practices and procedures in the administration of the contract.

- B. During construction of the project, if any changes in the sidewalk plans are necessary, such changes must be approved by the Division Engineer prior to the work beginning.
- C. All materials incorporated into the project and workmanship performed by the contractor shall be in reasonable close conformity with the Standards and Specifications of the Department.
- D. The Municipality shall not retain any portion of a payment due the contractor.
- E. Prior to the final acceptance and payment by the Department, the Division Engineer shall make a final inspection of the completed work. The Division Engineer will be responsible for final acceptance of the completed work on behalf of the Department.
- F. During construction of the project, the Municipality shall provide and maintain adequate barricades, signs, signal lights, flagmen, and other warning devices for the protection of traffic in conformation with standards and specifications of the Department and the current edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways* published by the Federal Highway Administration.
- G. The Municipality shall complete said work within one (1) year of execution of this agreement.

## **FUNDING**

- 7. Subject to compliance by the Municipality with the provisions set forth in this Agreement, and the availability of federal funds, the Department shall participate in the actual construction and engineering costs of the project not to exceed \$102,000. Costs which exceed this amount shall be borne by the Municipality.

- A. Upon completion of the project, the Municipality shall bill the Department for actual construction costs as herein stated by submitting an itemized invoice to the Department's Division Engineer. Reimbursement shall be made in one final payment upon receipt and approval of said itemized invoice by the Division Engineer and the Department's Financial Management Division. Said invoice must be submitted within six months of completion and acceptance of the project.

Along with each invoice, the Municipality is responsible for submitting the FFATA Recipient Information Form, which is available at <https://connect.ncdot.gov/municipalities/Funding/Pages/default.aspx>.

- B. Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than contract awarded by competitive bidding



- process. Written approval from the Division Engineer is required prior to the use of force account by the Municipality. Said invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in Office of Management and Budget (OMB) Circular A-87 ([http://www.whitehouse.gov/omb/circulars\\_default](http://www.whitehouse.gov/omb/circulars_default)). Reimbursement shall be based on actual cost incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.
- C. In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" ([www.whitehouse.gov/omb/circulars/a133/a133.html](http://www.whitehouse.gov/omb/circulars/a133/a133.html)), dated June 27, 2003, the Federal Single Audit Act Amendments of 1996, and NCGS § 159-34, the Municipality shall arrange for an independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.
- D. The Municipality shall adhere to applicable administrative requirements of Title 49 Code of Federal Regulations, Part 18 ([www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm)) and Office of Management and Budget (OMB) Circulars A-102 ([www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html)) "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at [www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm) and by Office of Management and Budget (OMB) Circular A-87 ([www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html)) "Cost Principles for State, Local, and Indian Tribal Governments." Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.
- E. The Municipality agrees that it shall bear all construction costs for which it is unable to substantiate actual costs.

- F. Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.
- G. Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the project.

## **CONSTRUCTION SUBCONTRACTOR GUIDELINES**

- 8. 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 Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 Part 26 of the Code of Federal Regulations and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference <https://connect.ncdot.gov/municipalities/Pages/Bid-Proposals-for-LGA.aspx>
  - A. The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
  - B. If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

## **MAINTENANCE**

- 9. The Municipality, at its own expense, shall be responsible for all liability and maintenance for said facility.

## **ADDITIONAL PROVISIONS**

- 10. 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.
- 11. 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.
- 12. The Municipality shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office at all reasonable times during the

contract period, and for five (5) years from the date of final payment under this agreement, for inspection and audit by the Department's Financial Management Division.

13. 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.
14. Each of the parties covenants that if it enters into any subcontracts in order to perform any of its obligations under this contract, it shall require that the contractors and their subcontractors comply with the requirements of NC Gen. Stat. Article 2 of Chapter 64. In this E-Verify Compliance section, the words contractors, subcontractors, and comply shall have the meanings intended by N.C. Gen. Stat. § 160A-20.1.
15. The Municipality shall certify to the Department compliance with all applicable Federal environmental 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.
16. The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department shall not be held liable by the Municipality for any expenses or obligations incurred for the Project except those specifically eligible for the federal funds and obligations as approved by the Department under the terms of this Agreement. The Department shall not reimburse the Municipality any costs that exceed the total federal funding at any time.
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. Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, or if the cost of work done by the Department exceed the funding award, the Department will bill the Municipality.
20. 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.
21. 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 that the approval of the project by the Department is subject to the conditions of this Agreement and that no expenditure of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

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.

L.S. ATTEST:

TOWN OF MORRISVILLE

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 Morrisville

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 Morrisville

DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
(CHIEF ENGINEER)

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

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (DATE)