

NORTH CAROLINA

**LOCALLY ADMINISTERED PROJECT – STATE
CONTINGENCY AGREEMENT**

CHATHAM COUNTY

DATE: 11/20/2018

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

AND

WBS Element: 48171

CHATHAM COUNTY

AND

TIM'S FARM AND FORESTRY, LLC

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," Chatham County, hereinafter referred to as the "County," and Tim's Farm and Forestry, LLC, hereinafter referred to as the "Developer."

WITNESSETH:

WHEREAS, the parties have agreed to prepare a Planning and Environmental Document under WBS Element 48171 in Chatham County for transportation improvements at the Chatham-Siler City Advanced Manufacturing Site subject to the Department's making the funds available for the Project; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-66.3, Section 136-18 (24) and (27), Section 20-169, Section 160A-296 and Section 297, to participate in the planning of the Project approved by the Board of Transportation for the safe and efficient utilization of transportation systems for the public good; and,

WHEREAS, the Department, the County, and the Developer have the duties, responsibilities, rights and legal obligations of the parties hereto for the purposes of this Agreement; and,

WHEREAS, the parties to this Agreement have approved the said Project with cost participation and responsibilities 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:

SCOPE OF PROJECT

1. The Project consists of the development of transportation improvements needed for the Chatham-Siler City Advanced Manufacturing Site in Chatham County (hereinafter the "Project"). For the purposes of this Agreement, the term "Project" includes preparing an environmental document and beginning final design for a proposed interchange on US 421 and a new access road to the site from the interchange. The term "Project" will also include preparing final design plans and bid documents for a full movement median crossover intersection on US 64. The term "Project" shall not include the preparation of the environmental documentation or applications as may be necessary to obtain such environmental permits as may be required for the overall development of the Chatham-Siler City Manufacturing Site or planning and design of roads that are contained within the Chatham-Siler City Manufacturing Site, unless the Department, the County and the Developer otherwise agree.

EXISTING CONTRACTS FOR PROFESSIONAL ENGINEERING SERVICES

2. The Developer has an existing contract with Kimley-Horn and Associates that the Department has reviewed and approved. Invoices related to this contract may be reimbursed under this agreement. Any change to the scope of this Agreement or costs already approved, related to the Project, must be reviewed and approved by the Department.

FUTURE CONTRACTS FOR PROFESSIONAL ENGINEERING SERVICES

3. If the County and/or the Developer causes the professional engineering services required by this Agreement to be performed by contracting with a different private engineering firm and seeks reimbursement for said services under this Agreement, it is agreed as follows:
 - A. The County and/or the Developer 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 County and/or the Developer, when procuring architectural, professional and engineering services, must adhere to North Carolina Department of Transportation Policies and

Procedures for Major Professional or Specialized Services Contracts. This policy conforms to N.C.G.S. 143-64, Parts 31 and 32.

- C. The County and/or the Developer shall submit all professional services contract proposals to the Department for review and approval prior to execution of the professional services contract by the County and/or the Developer.
- D. Small Professional and Engineering Services Requirements: 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 Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the NC Board of Transportation. These provisions are incorporated into this Agreement by reference www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html
 - The County 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.
 - If the County fails to comply with these requirements, the Department will withhold funding until these requirements are met.

PLANNING AND ENVIRONMENTAL DOCUMENTATION

- 4. The Developer, and/or its consultant, shall prepare the environmental and/or planning document. All work shall be done in accordance with departmental standards, specifications, policies and procedures.
- 5. If the Developer has not completed its responsibilities to the reasonable satisfaction of the Department, including satisfactory progress of the completion of the environmental document, the unexpended balance of funds may be recalled by the Department and assigned to other Projects by the Board of Transportation and the Developer shall reimburse costs incurred by the Department associated with the Project.

FUNDING

- 6. Subject to compliance by the County and the Developer with the provisions set forth in this Agreement, and the availability of funds, the Department shall participate in the costs up to a maximum amount of \$750,000 in Contingency funds, which have been approved by the Board of Transportation. Costs which exceed this amount shall be borne by the Developer.

Reimbursement to the County shall be made upon approval of the invoice by the Department's Division Engineer and the Department's Fiscal Section. If additional funds are needed to complete the Project, the Developer shall bear such cost only to the extent additional funds are approved by the Board of Transportation, in which case a supplemental agreement must be executed among the Department, the County, and the Developer, prior to any reimbursement of funds.

- A. The County and/or the Developer shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, such materials will be made available 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 Fiscal Section.
- B. The County and/or the Developer agree that it shall bear all otherwise reimbursable costs for which it is unable to substantiate actual costs.
- C. Failure on the part of the County and/or the Developer to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the Project.
- D. All invoices associated with the Project must be submitted within six months of the completion of the Project to be eligible for reimbursement by the Department.
- E. The Project must progress in a satisfactory manner as reasonably determined by the Department. If the Project does not remain active, the Department reserves the right to de-obligate said funding.

ADDITIONAL PROVISIONS

- 7. The County and/or the Developer 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.
- 8. 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.
- 9. It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency. By execution of this Agreement, the County and/or the Developer 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 a governmental department or agency.

10. The County and/or the Developer shall certify to the Department compliance with all applicable State laws and regulations and ordinances and shall indemnify the Department against any fines, assessments or other penalties resulting from noncompliance by the County or Developer or any entity performing work under contract with the County or Developer.
11. The County and/or the Developer are solely responsible for all agreements, contracts, and work orders entered into or issued by the County or the Developer for this Project. The Department is not responsible, for any expenses or obligations incurred for the Project except those specifically eligible in the terms of this Agreement. However, at no time shall the Department reimburse the costs which exceed the available funding for this Project.
12. The Department must approve any assignment or transfer of the responsibilities of the County or the Developer set forth in this Agreement to other parties or entities except for an agreement allocating responsibilities under this Agreement between the County and the Developer.
13. If the County and the Developer decide to terminate the Project without the concurrence of the Department, the Developer shall reimburse the County and the County shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project. Any notification of termination of this Project shall be in writing to the other party. Reimbursement to the Department shall be made in one lump sum payment within sixty (60) days of billing. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-241.21.
14. 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.
15. 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, 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).

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 County and the

Developer. IN WITNESS WHEREOF, this Agreement has been executed, in triplicate, the day and year heretofore set out, on the part of the Department, Chatham County and Tim's Farm and Forestry, LLC by authority duly given.

L.S. ATTEST: CHATHAM COUNTY
BY: _____ BY: _____
PRINT: _____ PRINT: _____
DATE: _____

L.S. ATTEST: TIM'S FARM AND FORESTRY, LLC
BY: _____ BY: _____
PRINT: _____ PRINT: _____
DATE: _____

"N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization."

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

(SEAL)

(FINANCE OFFICER)

Federal Tax Identification Number

Remittance Address:

Chatham County

PO Box 1809, Pittsboro NC 27312

Tim's Farm and Forestry, LLC

7157 Bobby Jean Road, Julian NC 27283

DEPARTMENT OF TRANSPORTATION

BY: _____
(CHIEF ENGINEER)

DATE: _____

PRESENTED TO THE BOARD OF TRANSPORTATION ITEM O: _____