



# Town of Holly Springs

## Town Council Meeting Agenda Cover Sheet

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**Agenda Item #: 10c**

**Meeting Date:** December 18, 2018

**Agenda Placement:** New Business

(Recognitions (awards, proclamations), Requests & Communications (reports, information presentations), Public Hearings, Consent Agenda, Unfinished Business, New Business, Closed Session or Agenda Addition)

**Subject Title:** Woodcreek Pedestrian Tunnel under I-540

**Staff Resource(s):** Kendra Parrish

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919-557-3935

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**Action(s):**

Approve NCDOT/Municipal Agreement for the cost share in the construction of the pedestrian tunnel under I-540 which connects the Woodcreek Subdivision.

**Background:**

Woodcreek development came after the corridor protection and therefore, if there is a pedestrian tunnel the Town must participate.

**Explanation:**

NCDOT/Turnpike will construct a pedestrian tunnel with the construction of I-540.

**Funding Source(s):**

\$365,000 to be moved from 21.95 (Parks and Rec Reserves) to 10.425.26.90.06.

NORTH CAROLINA

**DESIGN BUILD PROJECT – MUNICIPAL AGREEMENT  
WITH BETTERMENTS**

WAKE COUNTY

DATE: 9/17/2018

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

TIP #: R-2721A

AND

WBS Elements: 37673.1.TA1

TOWN OF HOLLY SPRINGS

THIS MUNICIPAL 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 Holly Springs, a local government entity, hereinafter referred to as the "Municipality".

**WITNESSETH:**

WHEREAS, the Department has plans to make certain street and highway constructions and improvements within the Municipality under Project 37673.1.TA1, in Wake County; and,

WHEREAS, the Department and the Municipality have agreed that the municipal limits, as of the date of the awarding of the contract for the construction of 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, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly, including but not limited to, the following legislation: General Statutes of North Carolina (NCGS), Section 136-66.1, Section 160A-296 and 297, Section 136-18, and Section 20-169, to participate in the planning and construction of a Project approved by the Board of Transportation for the safe and efficient utilization of transportation systems for the public good; and,

WHEREAS, the parties to this Agreement have approved the construction of said Project with cost participation and responsibilities for the Project 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 THE PROJECT**

1. The Project consists of the extension of the Triangle Expressway (Toll NC 540) from the NC 55 Bypass to east of Pierce Olive Road (SR 1389).

2. At the request of the Municipality and pursuant to a Memorandum of Understanding dated January 12, 2011 between the Parties, construction will include a Betterment for a 12'x12' pedestrian culvert connecting the Woodcreek subdivision, including a sewer line relocation if it is in conflict. Said work shall be performed in accordance with the Department's policies, procedures, standards, and specifications, and the following provisions.

## **PLANNING AND DESIGN**

3. The Department shall prepare the environmental and/or planning document, obtain any environmental permits needed to construct the Project, and prepare the Project plans and specifications needed to construct the Project. All work shall be done in accordance with departmental standards, specifications, policies and procedures.

## **RIGHT OF WAY**

4. The Department shall be responsible for acquiring any needed right of way required for the Project. Acquisition of right of way shall be accomplished in accordance with the policies and procedures set forth in the North Carolina Right of Way Manual.
5. It is understood by both parties that all work for the betterments shall be performed within the existing right of way. However, should it become necessary, the Municipality, at no expense or liability whatsoever to the Department, shall provide any needed right of way and or construction easements for the construction of the betterments, and remove from said rights of way all obstructions and encroachments of any kind or character. The Department shall be indemnified and held harmless from any and all damages and claims for damages associated with the acquisition of any construction easements and/or right of way.

## **UTILITIES**

6. If a separate request for municipal utility betterments is received from the Municipality, a separate Utility Agreement will be prepared to determine the reimbursement terms and costs for the relocation and/or adjustment of municipally owned utilities. The Municipality shall be responsible for reimbursing the Department the costs associated with adjustment or relocation.

## **CONSTRUCTION**

7. The Department shall construct, or cause to be constructed, the Project in accordance with the plans and specifications of said Project as filed with, and approved by, the Department. The Department shall administer the construction contract for said Project.

## **MAINTENANCE**

8. Upon completion of the Project:
  - A. The Department shall be responsible for all traffic operating controls and devices which shall be established, enforced, and installed and maintained in accordance with the North Carolina General Statutes, the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, the latest edition of the "Policy on Street and Driveway Access to North Carolina Highways", and departmental criteria.
  - B. The Department will include the culvert in its bi-annual inspections and any structural maintenance will be performed by the Department with the costs borne by the Municipality. The Municipality shall reimburse the Department 100% of all costs incurred by the Department, including any administrative costs. The Municipality will be responsible for routine maintenance (graffiti, clearing obstructions, etc.).
  - C. The Municipality, at no expense to the Department, shall assume all maintenance responsibilities for the sewer line and release the Department from all liability relating to such maintenance.

## **BETTERMENT COSTS AND FUNDING**

9. The Project Construction contract will be executed as a Lump Sum contract with no breakdown of construction quantities and associated costs. Both parties understand that there will be no adjustment to the Design Build fixed amount bid. The Municipality shall submit a check for \$325,000 to the Department's Division Engineer upon execution of this Agreement by the Municipality. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment herein above provided, NCGS § 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by NCGS § 136-41.1.

## **ADDITIONAL PROVISIONS**

10. 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.

11. To the extent authorized by state and federal claims statutes, each party shall be responsible for its respective actions under the terms of this agreement and save harmless the other party from any claims arising as a result of such actions.
12. All terms of this Agreement are subject to available departmental funding and fiscal constraints.
13. This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.
14. The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.
15. 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.
16. 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 upon that the approval of the Project by the Department is subject to the conditions of this Agreement.

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 HOLLY SPRINGS

BY: \_\_\_\_\_ BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_ 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 the Town of Holly Springs as attested to by the signature of \_\_\_\_\_

Clerk of the \_\_\_\_\_ (governing body) on \_\_\_\_\_

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

(SEAL)

BY: \_\_\_\_\_  
(FINANCE OFFICER)

Federal Tax Identification Number

\_\_\_\_\_

Remittance Address:  
Town of Holly Springs

\_\_\_\_\_

\_\_\_\_\_

DEPARTMENT OF TRANSPORTATION

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

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

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