

NORTH CAROLINA  
BUNCOMBE COUNTY

**MUNICIPAL BRIDGE AGREEMENT - FEDERAL**

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

DATE: 4/16/2010  
DESCRIPTION: REPLACEMENT OF BRIDGE #  
100528 ON TEXAS ROAD OVER FLAT CREEK

AND

TIP #: B-5196  
WBS Elements: PE 45252.1.1  
ROW 45252.2.1  
CON 45252.3.1

TOWN OF MONTREAT

OTHER FUNDING:

FEDERAL-AID NUMBER: BRZ-1329(6)

CFDA #: 20.205

DIVISION: 13

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 Montreat, hereinafter referred to as the "Municipality".

**WITNESSETH:**

WHEREAS, Federal Regulations provided funding for a Federal-Aid Highway Bridge Program including bridges located on public roads other than those on the Federal-Aid system; and,

WHEREAS, the Municipality proposes to make certain improvements under the Federal-Aid Highway Bridge Program; and,

WHEREAS, the Municipality and the Department are authorized to enter into an agreement for such improvement under the provision of G.S. 136-18 (12), G.S. 136-41.3, and G.S. 136-66.1; and,

WHEREAS, the Council of the Municipality has approved the construction of the hereinabove referenced project and has agreed to participate in certain costs thereof in the manner and to the extent as hereinafter set out.

NOW, THEREFORE, the Department and the Municipality agree as follows:

**GENERAL PROVISIONS**

Detailed Municipal Bridge Program Guidelines are located on the Municipal Bridge Website:  
<http://www.ncdot.org/planning/development/TIP/mbridge/MunicipalBridgeGuidelines.pdf>

Execution of this agreement certifies that the Municipality shall abide by the Municipal Bridge Guidelines.

**PROFESSIONAL ENGINEERING SERVICES:**

1. If the Municipality causes the professional engineering services required by this Agreement to be performed partially or in full by contracting with a private engineering firm, it is agreed as follows:

(A) The Municipality shall ensure that a qualified contractor 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/legregs/legislat.html](http://www.fhwa.dot.gov/legregs/legislat.html)).

(C) The Municipality shall submit all professional services contract Proposals to the Department for review and prior to execution of the professional services contract by the Municipality. In the event that the professional services contract proposal (professional and/or engineering) exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.

(D) The Municipality shall perform project administration in accordance with all State and Federal policies and procedures. If the Municipality elects to procure a private consulting firm to conduct project administration, the Municipality shall be responsible for submitting the consulting firm's proposal to the Department for review and approval.

2. The Municipality shall prepare or cause to be prepared the Project Planning Report, including environmental reports and applications for permits, in accordance with the Department's standard practices and submit it to the Department for review and approval. During the review of the planning report, it will be determined if a public hearing is required.

3. If a public hearing is required, the Municipality shall prepare or cause to be prepared the public hearing maps and submit them to the Department for review and approval.

**PROJECT PLANS & DESIGN:**

4. The Municipality shall prepare, or cause to be prepared, the project plans and specifications for the project. All work shall be performed in accordance with departmental standards and specifications and submitted to the Department for review and approval.
5. The Municipality shall design and prepare or cause to be designed and prepared preliminary right of way plans for the project in accordance with the Department's standard practices as defined in the Highway Design Branch's Roadway and Structure Design Manuals and Policy Manuals. The Municipality shall submit or cause to be submitted said preliminary plans to the Department for review and approval. The plans shall be completed to show the design, profiles, typical section, construction limits, drainage, proposed right of way, easements, and a traffic handling plan. The general drawing for all structures shall also be submitted.
6. The Municipality shall complete the plans and specifications for the project in accordance with the Department's standard practices for highway construction and in accordance with the comments received from the preliminary review.

**RIGHT OF WAY AND UTILITIES:**

7. The Municipality, without any liability whatsoever to the Department, shall acquire right of way necessary to provide right of way of the width and length as called for in the project plans as approved by the Department. However, the Municipality shall acquire said right of way only after being authorized in writing by the Department to proceed with said acquisition of right of way. In acquiring said right of way, the Municipality shall comply with the Right of Way Acquisition Policy contained in the Federal-Aid Policy Guide, Part 710, Subpart B; said policy being incorporated in this Agreement by reference, and currently available at <http://www.fhwa.dot.gov/legregs/directives/fapgtoc.htm>). In addition, the Municipality will obtain the necessary right of way in accordance with policies and procedures as set forth in the North Carolina Department of Transportation Right of Way Manual. Prior to initiating any right of way acquisition, the Municipality shall meet with the Department's Division Right of Way Agent to review federal guidelines and regulations for right of way acquisition. Payment to the Municipality for right of way expenditures will not be made by the Department until this meeting has occurred.
8. The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the project. Such services and payments shall be made in accordance with Public Law 91-646 and the North Carolina General Statutes, Chapter 133, Article 2, Sections 133-5 through 133-18. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal

agency, rendering such services upon approval by the Department and the Federal Highway Administration. Appraisal and relocation guidelines will be reviewed by the Department and the Municipality at the above referenced meeting with the Division Right of Way Agent.

9. The Municipality shall accomplish or cause to be accomplished the relocation or adjustment of any and all publicly or privately-owned utilities in conflict with construction of the project. A plan showing utility conflicts shall be included in the final plans.

**CONSTRUCTION:**

10. In the event the project is not let to contract within six (6) months after receiving final approval of construction plans and proposals from the Department, the Municipality shall be responsible for re-submitting two (2) sets of plans and proposals to the Department for review to ensure that they remain in compliance with any revisions in the Department's standard practices and regulations.

11. Prior to advertising the project for construction bids, the Municipality shall submit or cause to be submitted for approval by the Department the final construction plans, the total contract proposal, and an estimate of the project costs. Bids received along with proper documentation of Municipal approval shall be submitted for review and approval by the Department and the Federal Highway Administration prior to the contract being awarded by the Municipality. Further, upon award of the project to contract, the Municipality shall furnish to the Department five (5) copies of the executed contract and five (5) sets of plans. The Municipality shall follow Department regulations and Federal Highway Administration regulations pertaining to bid procedures in the award of the contract. Said Federal Highway Administration regulations are contained in Title 23 code of Federal Regulations, Part 633, Subpart A and 23 CFR Part 635, Subpart A; said policy being incorporated in this Agreement by reference and currently available at <http://www.fhwa.dot.gov/legisregs/directives/fapgtoc.htm> as fully as if herein set out. Letting of contracts for construction and purchases shall be in accordance with North Carolina General Statutes 143-129.

12. Subject to successful completion of the planning document and all required environmental work, the Municipality shall construct, or cause to be constructed, the project in accordance with the plans and specifications of the project as filed with and approved by the Department. During the construction of the project, the procedures set out hereinbelow shall be followed:

(A) The Municipality shall perform or cause to be performed the necessary construction engineering, sampling and testing, and supervision required during construction of the project.

(B) During construction of the project, if any changes in the project plans are necessary, such changes must be approved by the Department's Division Engineer prior to the work being performed.

(C) The Department's Division Engineer and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the project during construction.

(D) Prior to final approval and payment by the Department, said Division Engineer and a representative of the Federal Highway Administration shall make a final inspection of the completed work.

(E) The Municipality will be responsible for insuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department's Division Engineer as a result of any review or inspection made by said Division Engineer.

(F) Upon completion of the project, the Municipality will furnish or cause to be furnished the Department's Division Engineer with a certification that contract administration has been accomplished in accordance with the Municipality's procedures that have been approved by the Department. The Municipality shall also furnish certification that materials used in the construction meet the requirements as set forth in the contract.

(G) Upon completion of the project, the Municipality will furnish the Department with two complete sets of "As Built" plans.

(H) The Municipality shall maintain records to document quantities for which the contractor is paid during any monthly estimate period.

(I) The Municipality shall maintain all records that establish final documentation of quantities incorporated into the project in accordance with established Department procedures.

(J) All project records developed by the Municipality that are not submitted to the Department shall be retained by the Municipality for a period of five (5) years after the final voucher is paid by the Federal Highway Administration.

(K) 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 conformance with the traffic control plan for the project and with the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, or any subsequent revision of

the same, published by the Federal Highway Administration and effective at the time of award of the contract.

(L) Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department to withdraw participation on any or all of the items of work involved.

**FUNDING:**

13. The Department shall reimburse the Municipality to the extent of eighty percent (80%) of the approved **allowable** project costs incurred by the Municipality under this Agreement. Said reimbursement shall be subject to the policies and procedures contained in Federal-Aid Policy Guide Part 140, Subpart G and Federal-Aid Policy Guide Part 172 by reference and currently available at [http:// www.fhwa.dot.gov/legisregs/legislat.html](http://www.fhwa.dot.gov/legisregs/legislat.html). Said reimbursement shall also be subject to the Department being reimbursed through the Federal Aid Highway Bridge Program of the Federal Highway Administration, which is to participate in the costs of the project to the extent of eighty percent (80%) of allowable project costs subject to compliance with all applicable federal policy and procedural rules and regulations. The **estimated** total project cost is \$670,000.00. It is understood by all parties that this is an estimated cost and is subject to change. The Municipality is responsible for paying all **actual** project costs that exceed 80% of approved allowable project costs incurred by the Municipality under this agreement. Project cost reimbursement to the Municipality shall be made as follows:

(A) The Municipality may bill the Department for 80% of actual project costs on a quarterly basis as herein stated by submitting an invoice along with proper supporting documentation to the Municipal Bridge Coordinator for preliminary engineering and right of way costs and to the Department's Division Engineer for construction costs. The Municipal Bridge Coordinator and the Financial Management Division will reimburse the Municipality quarterly upon approval of said invoice for preliminary engineering and right of way costs. The Department's Division Engineer and the Financial Management Division will reimburse the Municipality quarterly upon approval of said invoice for construction costs. The project must progress in a satisfactory manner in the opinion of the Department and the Municipality must invoice the Department for work accomplished at least once every six (6) months to keep the project funds active and available. If the project does not remain active, the Department and/or FHWA reserves the right to de-obligate said funding. If any work is performed by the Department for review and inspection and/or at the request of the Municipality, the Department's Division Engineer shall reduce the maximum federal award amount available to the Municipality under this Agreement, accordingly.

(B) The Municipality shall be responsible for adhering to applicable administrative requirements of 49 CFR Part 18, and currently available at:

<http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm> and Office of Management and Budget (OMB) Circular A-102, and currently available at [www.whitehouse.gov/omb/circulars/a102/a102.html](http://www.whitehouse.gov/omb/circulars/a102/a102.html).

(C) 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 a competitive bidding process. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Federal-Aid Policy Guide, Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference [www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm](http://www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm). North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp).

(D) 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 and the Federal Single Audit Act Amendments of 1996, 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.

(E) Any costs incurred by the Municipality prior to written notification by the Department of federal authorization to proceed with the work shall not be eligible for reimbursement.

(F) A final itemized invoice listing all costs shall be submitted to the Department's Division Engineer. Upon completion of the work, the Municipality must submit an invoice that is clearly stamped or marked "Final Invoice" for reimbursement of any remaining costs to be paid under the terms of this Agreement. Upon receipt of the "Final Invoice," the Department will de-obligate any remaining funds and close the project subject to final review and audit.

(G) The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs, or any costs, which have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division. In the event funding is withdrawn by FHWA, project reimbursement shall be subject to the availability of any remaining federal funds.

(H) Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department and/or FHWA to terminate participation in the costs of the work.

(I) All invoices must be submitted within six (6) months of completion and acceptance of the work by the Department and FHWA or said invoices will be considered ineligible items for payment.

(J) The Municipality agrees that, if the Federal Highway Administration does not participate in certain costs because of noncompliance with federal regulations by the Municipality, the Municipality will reimburse the Department for such costs. All costs not reimbursed to the Department by the FHWA for noncompliance by the Municipality shall be borne by the Municipality.

(K) The Department reserves the right to deduct monies from the Municipality's Powell Bill Fund if monies paid to the Municipality from the project funds are determined by the Department and/or FHWA, either by audit and/or inspection of books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs, not to be in compliance with the terms of this agreement.

(L) Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved supplemental agreements.

(M) Reimbursement for construction contract administration will be made as governed by Section 106(c) Title 23 of the U.S. Code that limits federal participation, and Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the project.

14. The Municipality agrees that, if the Federal Highway Administration should not participate in certain costs because of noncompliance with Federal and/or State regulations, it will reimburse the Department for such costs regardless of any nonparticipation in the costs by the Federal Highway Administration. All costs not reimbursed to the Department by the Federal Highway Administration shall be borne by the Municipality. Following completion of the project, the Department shall invoice the Municipality for all costs incurred by said Department that are not reimbursed by the Federal Highway Administration. Reimbursement shall be made by the Municipality to the Department within sixty - (60) days of receiving an invoice from the Department. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23.

15. The Municipality, and/or its agent, shall also comply with the following federal policies: (a) Conflict of Interest; (b) Equal Employment Opportunity; and, (c) Title VI – Civil Rights Act of 1964 as fully as if herein set out, and currently available at:

[http:// www.fhwa.dot.gov/legregs/legislat.html](http://www.fhwa.dot.gov/legregs/legislat.html).

**CONSTRUCTION SUBCONTRACTOR REQUIREMENTS:**

16. 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

([www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html](http://www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html))

(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.

**ADDITIONAL PROVISIONS:**

17. The Municipality and its contractor 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 and shall require its contractor to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration under this Agreement, for inspection and audit by the Department, the Federal Highway Administration, or any authorized representatives of the Federal Government.

18. 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 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.

19. Upon completion of the project, the Municipality shall be responsible for the establishment and maintenance of traffic operating controls on the project. Such controls shall be in accordance with the approved project plans and the Manual on Uniform Traffic Control Devices for Streets and Highways published by the Federal Highway Administration.

20. The Municipality shall be responsible for the proper maintenance of the completed improvements and for the costs thereof. However, in the event the Municipality fails to maintain or to provide for the proper maintenance and operation of the completed improvements, the Municipality hereby authorizes the Department to maintain the improvements and deduct the costs thereof from allocations made to the Municipality under the provisions of the North Carolina General Statutes, Section 136-41.1.

21. The Municipality will complete the project in accordance with the plans and specifications adopted therefore, or as altered or amended by the Department. The Department shall have the right to abandon the project at any time it sees fit prior to the time the Municipality has been called upon to perform any part of its agreement.

22. 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 manger, 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 expenditures 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.

ATTEST: TOWN OF MONTREAT  
BY: Misty R. Gedlinke BY: Letta Jean Taylor  
TITLE: Town Clerk TITLE: MAJOR  
DATE: 12 MAY 2010

NCGS 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 Board of Commissioners of the Town of Montreat as attested to by the signature of Misty R. Gedlinke Clerk of the Town of Montreat on May 13, 2010 (Date)

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

(SEAL)

[Signature]  
(FINANCE OFFICER)

Federal Tax Identification Number  
56-0949173

Town of Montreat  
Remittance Address:  
P. O. Box 423  
Montreat, NC 28757  
Attn: Mr. Ron Nalley, Town Administrator  
DEPARTMENT OF TRANSPORTATION



BY: \_\_\_\_\_  
(STATE HIGHWAY ADMINISTRATOR)  
DATE: \_\_\_\_\_

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

