NORTH CAROLINA

TRANSYLVANIA COUNTY

SIDEWALK DINING AGREEMENT

DATE: 8/11/2020

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

AND

CITY OF BREVARD

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 City of Brevard hereinafter referred to as the "Municipality."

W I T N E S S E T H:

WHEREAS, the North Carolina General Assembly (NCGA) has enacted legislation to allow sidewalk dining (or the serving of food and beverage) on property within or adjacent to State right of way; and,

WHEREAS, this AGREEMENT is made under the authority granted to the Department by the NCGA including, but not limited to, the following applicable legislation: North Carolina General Statutes (NCGS), Section 136-18(9) and Section 136-27.4; and,

WHEREAS, this AGREEMENT is made in accordance with the most recent *Stewardship and Oversight Agreement on Project Assumption and Program Oversight*, executed between the Federal Highway Administration (NC Division) and the Department; and,

WHEREAS, this AGREEMENT outlines the Municipality's administrative rights and responsibility to enact a Sidewalk Dining Ordinance and issue Permits for such;

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:

I. SIDEWALK DINING ORDINANCE AND PERMITS - CONDITIONS OF APPROVAL-

The Municipality is given approval to administer a sidewalk dining ordinance and issue approval of permits allowing such in State right-of-way in or near the vicinity of the Municipality under the condition that the Municipality meets the following criteria:

A. The Municipality shall enact an ordinance that meets the requirements of, but not necessarily limited to the requirements of the General Statutes of North Carolina (NCGS), Section 136-27.4.

B. The Municipality shall provide the Department a copy of the ordinance once enacted and shall provide the Department any updates to the ordinance.

C. The permit issued by the Municipality shall require the restaurant operator to provide evidence of adequate liability insurance in an amount satisfactory to the local government, but in no event in an amount less than the amount specified by the local government under G.S. 160A-485 as the limit of the local government's waiver of immunity or the amount of Tort Claim liability specified in G.S. 143-299.2, whichever is greater. The insurance shall protect and name the Department and the local government as additional insureds on any policies covering the business and the sidewalk activities.

D. The permit issued by the Municipality shall require the restaurant operator to provide an agreement or evidence to indemnify and hold harmless the Department or the local government from any claim resulting from the operation of sidewalk dining activities.

E. The permit shall require the restaurant operator to provide a copy of all permits and licenses issued by the State, county or city, including health and ABC permits, if any, necessary for the operation of the restaurant or business, or a copy of the application for the permit if no permit has been issued to the Municipality. This requirement includes any permits or certificates issued by the county or city for exterior alterations or improvements to the restaurant.

F. The Municipality shall also meet any other requirements deemed necessary by the Department, either for a particular local government or a particular component of the State highway system to safely allow sidewalk dining.

G. The Municipality may impose additional requirements on a case-by case basis and nothing in this AGREEMENT requires the Municipality to issue or maintain any permit for sidewalk dining activities if, in the opinion of the Municipality, such activities cannot be conducted in a safe manner in the State right-of-way.

H. The Department shall cancel this AGREEMENT and revoke the permission of the Municipality to issue permits if at any time the Department considers that the safety of the traveling motorist, pedestrians, or any other third party may be compromised.

I. The Department reserves the right to cancel this AGREEMENT on a case-by-case basis if the Department deems the activities permitted by the Municipality cannot be conducted in a safe manner.

J. No permits may be issued for sidewalk dining on any interstate route.

K. The Municipality shall obtain permission from the Department to permit the right-of-way of any federal-aid route on or off the National Highway System to be used for sidewalk dining. A request for permission should be coordinated with the Department's Division Engineer.

L. The Municipality shall keep and maintain a list or database of all current permits and issued parties that may be requested by the Department at any time. A copy of all paperwork and submitted documents shall be kept on hand and provided to the Department if requested. If the permit is incomplete or does not meet the standards of this AGREEMENT, the Department reserves the right to cancel this AGREEMENT.

II. SIDEWALK DINING ORDINANCE AND PERMITS - MINIMUM CONDITIONS OF ORDINANCE

The ordinance enacted by the Municipality shall be consistent with, but not necessarily limited to, the following minimum criteria:

A. Tables, chairs, and other furnishings shall be placed a minimum of six feet from any travel lane.

B. Tables, chairs, and other furnishings shall be placed in such a manner that at least five feet of unobstructed paved space of the sidewalk, measured from any permanent or semi-permanent object, remains clear for the passage of pedestrians and provides adequate passing space that complies with the Americans with Disabilities Act.

C. Tables, chairs, and other furnishings shall not obstruct any driveway, alleyway, building entrance or exit, emergency entrance or exit, fire hydrant or standpipe, utility access, ventilations areas, or ramps necessary to meet accessibility requirements under the Americans with Disabilities Act.

D. The maximum posted speed permitted on the roadway adjacent to the right-of-way to be used for sidewalk dining activities shall not be greater than 45 miles per hour.

E. The standards set forth by this AGREEMENT are minimums according to General Statute. Every potential site for Sidewalk Dining shall be reviewed by the Municipality for safety. Meeting these minimum guidelines alone does not imply that minimum standards for safety have been met. NCDOT reserves the right to limit or restrict application of this AGREEMENT along specific corridors or locations if safety becomes an issue.

F. The restaurant operator shall cease part or all sidewalk dining activities in order to allow construction, maintenance, or repair of any street, sidewalk, utility, or public building, by the Department, the local government, its agents or employees, or by any other governmental entity or public utility.

III. SIDEWALK DINING ORDINANCE AND PERMITS - TIME FRAME

This AGREEMENT shall remain in place until canceled in writing by either party with thirty (30) days written notice to the other party.

IV. ADDITIONAL PROVISIONS

A. This AGREEMENT shall not preempt or override local ordinances which have been enacted within the authority of the NCGS that are currently in place.

B. The Department shall not be held liable for any damages resulting from implementation of any ordinances or issuance of any permits under the terms of this AGREEMENT.

C. 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.

D. The parties hereby acknowledge that the individual executing this 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.

E. 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.

F. 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).

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:

BY: Denise Hodsdon

TITLE: Executive Assistant

DATE: August 19, 2020

CITY OF BREVARD

BY:

TITLE: City Manager

DATE: August 19, 2020

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.

(SEAL)

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

(FINANCE OFFICER)

Federal Tax Identification Number

56-6001186

Remittance Address:

95 W. Main Street

Brevard, NC 28712

DEPARTMENT OF TRANSPORTATION

BY: DocuSigned by: FE1671ADB2D04F8...

(CHIEF ENGINEER)

DATE: 9/15/2020

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 9-3-2020 (Date) DS