



Community and Economic Development in North Carolina and Beyond Blog: Reimbursement Agreements

By CED Guest Author

Article: <https://ced.sog.unc.edu/reimbursement-agreements/>

This entry was posted on February 16, 2016 and is filed under Built Assets & Housing, Community Development, Economic Development, Financial Assets, Financing Development

A developer in town is seeking approval for a large new real estate project. The zoning and subdivision ordinances call for the developer to construct and dedicate public streets and parks and water infrastructure. But, the city has plans for some additional improvements adjacent to the development—a greenway on adjoining property and some intersection improvements nearby. The developer's contractors will already be on site, grading land and constructing improvements. Could the city just pay the developer to build the city's improvements, too?

The answer is yes. But, of course, there are limits and procedural requirements. Cities and counties may enter into agreements for certain improvements—beyond those required as part of the development approval—to be made by a developer. The General Statutes include overlapping authority for contracting for public enterprise improvements, roadway improvements (cities only), as well as general reimbursement agreements. This blog outlines the basics of those overlapping authorities.

Public Enterprise Improvement Contracts

A city or county can contract with a developer or owner (or their contractor) for “public enterprise improvements that are adjacent or ancillary to a private land development project” (G.S. 153A-280(a); G.S. 160A-320(a)). Public enterprises include water, wastewater, public transportation, parking, and stormwater management, among other things. Under a public enterprise improvement contract, the local government is to reimburse the private party for the cost of designing and constructing such improvements. This reimbursement, though, cannot pay the costs of improvements required by land development regulations. If, for example, the subdivision ordinance calls for the developer to construct and dedicate water and sewer to serve the newly created lots, the city could not reimburse the developer for those improvements that are required by the ordinance. The city could use a public enterprise improvement contract to pay for the developer oversizing certain pipes to accommodate future growth.

A local government may adopt ordinances and policies to establish procedures, requirements, and terms for such agreements. If the public cost of a reimbursement contract does not exceed \$250,000, the contract is not subject to the public bidding laws under Article 8 of Chapter 143, but the local government must find either that (1) the cost of the reimbursement contract will not exceed the estimated cost for such work if city or county staff performed it (e.g., eligible force account qualified labor) or through a bid contract; or (2) that coordination of separately constructed improvements would not be practical.

For public enterprise improvement contracts, the improvements may be on property owned by a private party or the local government. The developer can assist with obtaining easements across other private properties that will be necessary for or affected by the improvements. The local government and developer may contract for reimbursement prior to acquisition of real property necessary for the project. That said, the authority is for “public enterprise improvements,” so the improvements will need to be dedicated to the public.

Roadway and Intersection Improvement Contracts

For roadway and intersection improvements, cities have authority for contracts substantially similar to the authority to contract for public enterprise improvements (G.S. 160A-309). There is no comparable authority for counties, but counties may accomplish similar goals through the reimbursement general agreements discussed below.

The roadway improvement contract may be with the developer, the property owner, or their contractor. The contract must



be “for public intersection or roadway improvements that are adjacent or ancillary to a private land development project.” Contracts in which the public share is less than \$250,000 are not subject to public bidding if the city makes the necessary determination that either (1) the cost of the reimbursement contract will not exceed the estimated cost for such work if city staff performed it (e.g., eligible force account qualified labor) or through a bid contract; or (2) that coordination of separately constructed improvements would not be practical.

The city may adopt ordinances or policies to set forth the details for such contracts. In contrast to the public enterprise improvements authority, the roadway improvements authority does not have language specifically concerned with property acquisition.

So, in addition to requiring the improvements to a nearby road or intersection necessitated by the development (lawful exactions), a city could contract for a developer to provide additional improvements to those roads or intersections and reimburse the developer for such improvements.

Reimbursement Agreements

In addition to the authority for contracting for public enterprise improvements and roadway improvements, cities and counties are authorized to enter reimbursement agreements for a developer or property owner to design and construct certain municipal infrastructure (G.S. 153A-451; G.S. 160A-499). The reimbursement may be paid through any lawful source. The improvements may include, among other things, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, and traffic control devices.

Statesville, as an example, provides that

Streets, water lines, wastewater systems, drainage facilities, electric lines and telecommunications lines shall be constructed through new development to promote the logical extension of public infrastructure to serve future growth. The City may require the applicant for a subdivision to extend offsite improvements to reach the subdivision or to oversize required public facilities to serve anticipated future development as a condition of plat or plan approval. The City shall pay the cost of upsizing a utility line.

(Statesville Unified Development Code § 8.01.H)

Before entering into a reimbursement agreement, a city or county must adopt an ordinance “setting forth procedures and terms under which such agreements may be approved” (G.S. 160A-499(b)). The specific improvement must be included in the local government’s capital improvement plan (CIP) and must serve the developer or property owner. It is worth noting here that cities and counties are not generally required to have capital improvement plans. If a jurisdiction intends to use a reimbursement agreement it would need to ensure that it has adopted a CIP in advance.

A reimbursement agreement itself is not subject to public bidding laws, but the private party completing the work under the reimbursement agreement must “solicit bids in accordance with Article 8 of Chapter 143 of the General Statutes when awarding contracts for work that would have required competitive bidding if the contract had been awarded by the city [or county]” (G.S. 160A-499(d)).

The county version of the statute, which perhaps was copied from the municipal version, refers to paying for “municipal infrastructure” (G.S. 153A-451(a)). This terminology is confusing since the infrastructure is in the county, not a municipality, but two elements of the statute help clarify the meaning. First, the relevant infrastructure work must be included in the county’s CIP, and a county’s CIP will, by definition, be for county infrastructure, not the infrastructure of a nearby town. Second, the statute’s definition of “municipal infrastructure” specifies particular facilities (water mains, sanitary sewer lines, streets, etc.), not that such facilities must be within a municipality. Thus, in this instance, the qualifier *municipal* in front of *infrastructure* appears to describe a type of infrastructure and not the location of infrastructure.

County reimbursement authority is limited to infrastructure projects for which the county otherwise has statutory authority to undertake. This could raise concern about street construction, but the county reimbursement authority aligns with other county authority for funding road improvements constructed by other parties. Under G.S. 136-98, a “county is authorized to participate in the cost of rights-of-way, construction, reconstruction, improvement, or maintenance of a road on the State



highway system under agreement with the Department of Transportation.” And, under G.S. 153A-331, a county may use subdivision fees in lieu of construction to pay a municipality to perform street improvements.

Conclusion

Cities and counties may contract with a developer to construct improvements beyond what is necessitated by the development. Contracting for additional capacity in roads and pipes or constructing public improvements adjacent to the development may be authorized under a public enterprise improvement contract, a roadway improvement contract (cities only), or a general reimbursement agreement. These overlapping authorities can facilitate cost-effective construction of public infrastructure. But, a local government must be careful to mind the procedures and limitations that apply to each type of authority, as outlined in the chart below.

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Statute	Public Enterprise Improvement Contract 153A-280, 160A-320	Roadway and Intersection Improvement Contract 160A-309	Reimbursement 153A-451, 160A-309
Infrastructure	Public enterprises including water, wastewater, public transportation, parking, and stormwater management, and others	public intersection or roadway improvements	“municipal in other things, lines, lift stati curb and gut devices
Authority	cost of design and construction of the improvements; must be adjacent or ancillary to a private land development project; cannot pay for improvements required by developer, contractor, or private party under contract with developer or owner	City Must be adjacent or ancillary to a private land development project	City and County government's must serve the Developer or
Scope Private Party	Developer, contractor, or private party under contract with developer or owner	Developer, contractor, or private party under contract with developer or owner	Developer or
Ordinance for	May adopt	May adopt	Must adopt
Procedures and Terms	Contracts with public share less than \$250,000 exempt, with proper findings	Contracts with public share less than \$250,000 exempt, with proper findings	Agreement is solicit bids sa
Bidding of Construction Work	Contracts with public share less than \$250,000 exempt, with proper findings	Contracts with public share less than \$250,000 exempt, with proper findings	Agreement is solicit bids sa







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Property Acquisition

Provisions for obtaining easements on third-party property

No specific authority

No specific a

