

NORTH CAROLINA  
DURHAM COUNTY

**3<sup>rd</sup> SUPPLEMENTAL AGREEMENT**

DATE: 10/4/2011

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

TIP #: EL-2921 E

AND

WBS ELEMENTS: PE 33896.1.3

ROW \_\_\_\_\_

CITY OF DURHAM

CON 33896.2.4

OTHER FUNDING:

FEDERAL-AID #: STP-0505(17)

CFDA #: 20.205

TOTAL SUPPLEMENTAL FUNDS [NCDOT PARTICIPATION] \$7,497,057

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 Durham, hereinafter referred to as the "Municipality."

**WITNESSETH:**

WHEREAS, the Department and the Municipality, on 1/29/2008, entered into a certain Locally Administered Project Agreement for the original scope: the construction of a 10-foot wide asphalt section with 2-foot select material shoulders for approximately 12,891 feet (2.4 miles), from NC 54 to Scott King Road to include the construction of a minimum 10-foot wide bridge from rail to rail over I-40, and a 10-foot wide asphalt section with 2-foot select material shoulders for approximately 8,732 feet (1.7 miles) from Scott King Road to the Durham/Chatham County line, programmed under Project EL-2921 E;

WHEREAS, the Department and the Municipality, on 7/22/2010 entered into a Supplemental Agreement to modify the funding in the original Agreement; and,

WHEREAS, the Department and the Municipality, on 2/28/2011 entered into a Supplemental Agreement to clarify the maintenance responsibilities for both the Department and the Municipality; and,

WHEREAS, this Supplemental Agreement is to revise the funding and supersede the Supplemental Agreement executed on 7/22/2010; and,

NOW THEREFORE, the parties wish to supplement the aforementioned Agreement whereby the following provisions are amended:

**FUNDING**

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall participate up to a maximum amount of Seven Million Four Hundred Ninety-Seven Thousand and Fifty-Seven Dollars (\$7,497,057), as detailed below. The Municipality shall provide a local match (\$1,753,764), as detailed in the FUNDING TABLE below, and all costs that exceed the total estimated cost.

**FUNDING TABLE**

<b>Fund Source</b>	<b>Federal Funds Amount</b>	<b>Reimbursement Rate</b>	<b>Non-Federal Match \$</b>	<b>Non-Federal Match Rate</b>
STP-DA	\$4,135,377	80 %	\$1,033,844	20 %
High Priority (Earmark 3454)	\$2,879,680	80%	\$719,920	20%
Section 117 (DP)	\$482,000	100%		
<b>Total NCDOT/FHWA Funds</b>			<b>\$7,497,057</b>	
<b>Total Estimated Cost</b>			<b>\$9,250,821</b>	

**BILLING THE DEPARTMENT**

**PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department’s guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

**INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

## **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

## **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

## **RESPONSIBILITIES**

The Municipality shall complete the Project by May 31, 2014.

## **OTHER PROVISIONS**

### **INDEMNIFICATION OF DEPARTMENT**

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

### **DEBARMENT POLICY**

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality 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 any Federal or State Agency or Department 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.

## **TITLE VI**

The Municipality 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 and activities of any recipient of Federal assistance.

## **GIFT BAN**

By Executive Order 24, issued by Governor Purdue, 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

Except as hereinabove provided, the Agreement heretofore executed by the Department and the Municipality on 1/29/2008, 7/22/2010 and 2/28/2011 are ratified and affirmed as therein provided.

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: CITY OF DURHAM

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

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

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

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

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

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

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 \_\_\_\_\_ (Governing Board) of the City of Durham as attested to by the signature of \_\_\_\_\_, Clerk of the \_\_\_\_\_ (Governing Board) on \_\_\_\_\_ (Date)

This instrument 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:

City of Durham

\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF TRANSPORTATION

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

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

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