

NORTH CAROLINA
DURHAM COUNTY

2nd SUPPLEMENTAL AGREEMENT

DATE: 1/13/2011

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: I-0306 C

AND

WBS ELEMENTS: 34143.3.6

CITY OF DURHAM

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 6/13/2003, entered into an Agreement for the widening of I-85 from east of SR 1401 (Cole Mill Road) to west of Broad Street in Durham; and,

WHEREAS, the Department and the Municipality, on 10/04/2007, entered into a Supplemental Agreement to amend the Project scope and to increase the STP-DA funds; and,

WHEREAS, the Municipality was invoiced on 6/8/2010 for the amount of \$418,443.79 for the balance of said Municipal Agreement; and,

WHEREAS, the Municipality was invoiced on 6/10/2010 and remitted payment in the amount of \$127,372.84 for the balance of said Supplemental Agreement.

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

FUNDING

At the request of the Municipality, and authorization from the Transportation Advisory Committee (TAC) of the Durham-Chapel Hill-Carrboro (DCHC) Metropolitan Planning Organization (MPO), the Department shall shift the unobligated Direct Attributable Funds from the construction of the median planters to the betterment

cost of the brick noise wall, the cost of the sidewalks, and concrete islands as detailed in Exhibit "A". Based upon the reallocation of the Direct Attributable Funds, the final direct obligation of the Municipality for the project is amended to \$364,050.56 as also shown in Exhibit "A". Any unobligated Direct Attributable Funds remaining shall revert back to the DCHC MPO Direct Attributable Fund Allocation.

In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment herein above provided, North Carolina General Statute 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by the General Statutes of North Carolina, Section 136-41.1 until such time as the Department has received payment in full under the reimbursement terms set forth in this Agreement. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23.

RESPONSIBILITIES

GIFT BAN

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 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, 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).

Except as hereinabove provided, the Agreement heretofore executed by the Department, and the Municipality on the 6/13/2003 and 10/4/2007, is 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: _____

DATE: _____

TITLE: _____

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)

EXHIBIT A

		I-306C MUNICIPAL SAP ID # 2549		I-306C SUPPLEMENTAL SAP ID # 4036	
ACTUAL TOTAL =		PLANTERS	NOISE WALL	SIDEWALK	TOTAL
80% OF TOTAL =		\$ 864,549.21	\$ 646,205.77	\$ 122,124.98	\$ 1,632,879.96
ORIGINAL DA =		\$ 691,639.37	\$ 516,964.62	\$ 97,699.98	\$ (1,645,360.00)
NEW DA =		\$ (1,122,563.20)	\$ (447,723.20)	\$ (75,073.60)	\$ (1,306,303.97)
DURHAM OWES =		\$ (691,639.37)	\$ (516,964.62)	\$ (97,699.98)	\$ 326,575.99
DA REALLOCATED =		\$ 172,909.84	\$ 129,241.15	\$ 24,425.00	\$ (339,056.03)
		\$ (430,923.83)	\$ 69,241.42	\$ 22,626.38	
		CONCRETE ISLANDS			TOTAL
ACTUAL TOTAL =		\$ 187,372.84			\$ 187,372.84
80% OF TOTAL =		\$ 149,898.27			\$ (60,000.00)
ORIGINAL DA =		\$ (60,000.00)			\$ (149,898.27)
NEW DA =		\$ (149,898.27)			\$ 37,474.57
DURHAM OWES =		\$ 37,474.57			\$ 89,898.27
DA REALLOCATED =		\$ 89,898.27			