Executive Summary

The Executive Summary is a summation of this agreement and is not intended to be used as the agreement between the Department (North Carolina Department of Transportation) and the Party (Entity).

Entity: City of Durham

County: Durham

TIP / WBS Element:

TIP: _____

WBS Element: 41720

Scope: The Project consists of the replacement of an existing twin 48" corrugated metal pipes with twin 5' by 5' concrete box culverts under University Drive between James Street and Woodridge Drive in Durham.

Funding:

Type (Payable or Non-Participation): Payable

State Agreement Type: Small Construction

State Funding: $93,000

Total Cost: $410,510

Funding for (Project or Construction): Construction

Payment Interval: upon completion

Will the Department reimburse the ROW: False

If "True" appears, the Department will reimburse
If "False" appears, the Department will not reimburseNo

Responsibilities:

Planning: Municipality

Design: Municipality

ROW: Municipality

Utilities: Municipality

Construction: Municipality

Maintenance: The Department shall maintain the Construction upon completion.

NORTH CAROLINA

LOCALLY ADMINISTERED PROJECT – STATE SMALL CONSTRUCTION AGREEMENT

DURHAM COUNTY

DATE: 8/4/2011

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

AND

WBS Elements: 41720

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 City of Durham, hereinafter referred to as the "Municipality".

W I T N E S S E T H:

WHEREAS, the parties have agreed to make certain improvements within the Municipality under WBS Element 41720 in Durham County in accordance with the plans and specifications approved by the Department; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-66.3, Section 136-18 (24) and (27), Section 20-169, Section 160A-296 and Section 297, to participate in the planning and construction of the Project approved by the Board of Transportation for the safe and efficient utilization of transportation systems for the public good; and,

WHEREAS, the Department and the Municipality have agreed that the jurisdictional limits of the Parties, as of the date of the awarding of the contract for the construction of the above-mentioned Project, are to be used in determining the duties, responsibilities, rights and legal obligations of the parties hereto for the purposes of this Agreement; and,

WHEREAS, the parties to this Agreement have approved the construction of said Project with cost participation and responsibilities for the Project as hereinafter set out.

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:

SCOPE OF PROJECT

1. The Project consists of the replacement of an existing twin 48" corrugated metal pipes with twin 5' by 5' concrete box culverts under University Drive between James Street and Woodridge Drive in Durham (hereinafter the “Project”).

PROCUREMENT OF SPECIALIZED SERVICES

2. If the Municipality causes the professional engineering services required by this Agreement to be performed by contracting with a private engineering firm and seeks reimbursement for said services under this agreement, it is agreed as follows:

   A. The Municipality shall ensure that an engineering firm 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 Policies and Procedures for Major Professional or Specialized Services Contracts. This policy conforms to N.C.G.S. 143-64, Parts 31 and 32.

   C. The Municipality shall submit all professional services contract proposals to the Department for review and approval prior to execution of the professional services contract by the Municipality. In the event that the professional services contract proposal (engineering) exceeds $30,000, a pre-negotiation audit must be requested from the Department’s External Audit Branch. A pre-negotiation audit of a contract under $30,000 will be performed by the Department’s External Audit Branch if the Municipality requests it.

   D. Reimbursement for construction administration costs cannot exceed fifteen percent (15%) of the actual construction contract cost. This applies to private engineering firms and/or work performed by the Municipality. 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 Division Engineer for review and approval. The Municipality,

and/or its agent, shall perform Project administration in accordance with all Departmental policies and procedures.

E. All work shall be prepared and submitted using computer software and applications approved by the Department and compatible with departmental equipment and programs.

F. Small Professional and Engineering Services Requirements: 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 Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the NC Board of Transportation. These provisions are incorporated into this Agreement by reference www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html

- 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.

- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

PLANNING AND DESIGN

3. The Municipality, and/or its consultant, shall prepare the environmental and/or planning document and obtain any environmental permits needed for the Project. All work shall be done in accordance with departmental standards, specifications, policies and procedures.

4. The Municipality shall design and prepare the plans and specifications for the Project, in accordance with the Department's standard practices, regulations and guidelines for transportation improvements. The Department shall review and approve Project plans and specifications.

UTILITIES

5. The Municipality, without any cost or liability whatsoever to the Department, shall relocate and adjust all utilities in conflict with the Project. All utility work shall be performed in a manner satisfactory to and in conformance with rules and regulations of the Department prior to the

Municipality beginning construction of the Project. The Municipality shall make all necessary adjustments to house or lot connections or services lying within the right of way or construction limits of the Project, whichever is greater, regardless of ownership of the connections or services. Any encroachment agreement and/or permits required for the Project must be obtained from the Division Office. All work shall be performed in accordance with the Department's approved Utility Relocation Policy and standard procedures for utility improvements.

RIGHT OF WAY

6. The Municipality, at no expense or liability whatsoever to the Department, shall be responsible for acquiring any needed right of way and/or permanent easements required for said Project. If the Project is not to be constructed within the existing right of way, the Municipality will be responsible for any additional right of way or easements. Acquisition of right of way shall be accomplished in accordance with applicable policies, guidelines, statutes and the North Carolina Department of Transportation Right of Way Manual.

   The Municipality shall remove from said right of way all obstructions and encroachments of any kind or character (including hazardous and contaminated materials). The Municipality shall indemnify and save harmless the Department from any and all claims for damages that might arise on account of said right of way acquisition, and construction easements for the construction of said Project.

CONSTRUCTION

7. The Municipality shall construct, or cause to be constructed, the Project in accordance with the plans and specifications of said Project as filed with, and approved by, the Department. The Municipality shall enter into and shall administer the construction contract for said Project and the procedures set out herein below shall be followed:

   A. Prior to advertising the Project for construction bids, the Municipality or its agents, shall submit for approval by the Department, the final construction plans, the total contract proposal, and an estimate of the Project costs to the Division Engineer. Bids received along with proper documentation of Municipal approval shall be submitted to the Division Engineer for review and approval by the Department prior to the contract being awarded by the Municipality. Upon award of the Project, the Municipality shall provide the Division Project Manager copies of the executed contract and sets of plans as requested.

B. The Municipality shall follow Department regulations, and North Carolina General Statutes regulations pertaining to bid procedures in the award of the contract and purchases. The Municipality shall not enter into any contractual agreement for any phase of the Project without prior written approval from the Department.

C. The construction engineering and supervision will be furnished by the Municipality. Said work shall be accomplished in accordance with terms set out in Provision #2 of this Agreement.

D. The Department's Division Engineer shall have the right to inspect, sample, test, and approve or reject any portion of the Project being performed by the Municipality or the Municipality's contractor, to ensure compliance with the provisions of this Agreement. The Department will furnish the Municipality with any forms that may be needed in order to follow standard Departmental practices and procedures in the administration and performance of the contract.

E. The Municipality shall sample and test all materials in reasonable close conformity with the Department's Guide for Process Control and Acceptance Sampling and Testing. The Division Engineer shall be provided a copy of the testing results.

F. During construction of the Project, if any changes in the plans are necessary, such changes must be approved by the Division Engineer prior to the work being performed.

G. All materials incorporated in the Project and workmanship performed by the contractor shall be in reasonable close conformity with the Standards and Specifications of the Department.

H. Upon completion of the Project, the Municipality shall furnish the Division Engineer with complete sets of "Plan of Record" and/or "As Built" plans as requested.

I. Prior to the final acceptance and payment by the Department, the Division Engineer shall make a final inspection of the completed work. The Division Engineer will be responsible for final acceptance of the completed work on behalf of the Department.

J. 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 conformation with standards and specifications of the Department and the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways published by the Federal Highway Administration.

K. 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 documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

L. The Municipality shall complete construction of the Project, in accordance with the terms of this Agreement within two year(s) of execution of this Agreement. If the Municipality has not completed its responsibilities to the satisfaction of the Department, including satisfactory progress of the various phases of the Project, the unexpended balance of funds may be recalled by the Department and assigned to other Projects by the Board of Transportation and the Municipality shall reimburse costs incurred by the Department associated with the Project.

CONSTRUCTION SUBCONTRACTOR GUIDELINES

8. Any construction contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Minority Businesses and Women Businesses as required by GS 136-28.4 and the North Carolina Administrative Code.

A. The Department will provide the appropriate provisions to be contained in those contracts. Those provisions are available on the Department's website at www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal. html

B. No advertisement shall be made nor any contract be entered into for services to be performed as part of this Agreement without prior written approval of the advertisement or contents of the contract by the Department.

C. Failure to comply with these requirements will result in funding being withheld until such time as these requirements are met.

FUNDING

9. Subject to compliance by the Municipality with the provisions set forth in this Agreement, and the availability of funds, the Department shall participate in the actual Construction costs up to a maximum amount of $93,000 (estimated costs are $410,510). Costs which exceed this amount

shall be borne by the Municipality. Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Division Engineer and the Department's Fiscal Section.

A. The Municipality may bill the Department for actual costs by submitting an itemized invoice and requested documentation to the Department. Reimbursement shall be made upon completion. By submittal of said invoice, the Municipality certifies that it has adhered to all applicable state laws and regulations as set forth in this Agreement.

B. 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 competitive bidding process. Written approval from the Division Engineer is required prior to the use of force account by the Municipality. Said invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in Office of Management and Budget (OMB) Circular A-87 (www.whitehouse.gov/omb/circulars/a087/a087.html). Reimbursement shall be based on actual cost incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

C. In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" (www.whitehouse.gov/omb/circulars/a133/a133.html) dated June 27, 2003, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual 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.

D. The Municipality 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 at all reasonable times during the contract period, and for five (5) years from the date of final payment under this Agreement, for inspection and audit by the Department's Fiscal Section.

E. The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs.

F. Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the Project.

G. All invoices associated with the Project must be submitted within six months of the completion of the Project to be eligible for reimbursement by the Department.

H. The Project must progress in a satisfactory manner as determined by the Department. If the Project does not remain active, the Department reserves the right to de-obligate said funding.

I. The expenses incurred by the Department for reviews, approvals, inspections and other tasks set forth in this Agreement are an eligible Project cost and charged to allocated Project funding.

TRAFFIC

10. All traffic operating controls and devices shall be established, enforced, and installed in accordance with the North Carolina General Statutes, the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, the latest edition of the "Policy on Street and Driveway Access to North Carolina Highways", and maintained and controlled by the Department upon completion of the Project.

MAINTENANCE

11. Upon completion of the Project, only those improvements within the state owned right of way shall be considered on the State Highway System and owned and maintained by the Department.

ADDITIONAL PROVISIONS

12. 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 or activities of any recipient of Federal assistance.

13. This Agreement is solely for the benefit of the identified parties to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

14. It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency. 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 a governmental department or agency.

15. The Municipality shall certify to the Department compliance with all applicable State laws and regulations and ordinances and shall indemnify the Department against any fines, assessments or other penalties resulting from noncompliance by the Municipality or any entity performing work under contract with the Municipality.

16. The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible, for any expenses or obligations incurred for the Project except those specifically eligible in the terms of this Agreement. However, at no time shall the Department reimburse the Municipality costs which exceed the total funding for this Project.

17. The Municipality will indemnify and hold harmless the Department and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claims for damage and/or liability in connection with the Project activities performed pursuant to this Agreement including construction of the Project. The Department shall not be responsible for any damages claims, which may be initiated by third parties.

18. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

19. If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project. Any notification of termination of this Project shall be in writing to the other party. Reimbursement to the Department shall be made in one lump sum payment within sixty (60) days of billing. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-241.21.

20. In compliance with state policy, the Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall have a Conflict of Interest Policy and adhere to the

Department's Women Business Enterprise (WBE) and Minority Business Enterprise (MBE) policy which requires goals to be set and participation to be reported, as more fully described in the Subcontractor Guidelines section of this Agreement.

21. All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

22. Where the Department determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, the Department reserves the right to deduct monies from the Municipality's Powell Bill Fund. Such determination shall be made, 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 or in the event of non-payment by the Municipality.

23. "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, 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 expenditure 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.

L.S. ATTEST: CITY OF DURHAM

BY: _____ BY: _____

TITLE: _____ TITLE: _____

DATE: _____

"N.C.G.S. § 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 _____ of the City of Durham as attested to by the signature of

_____, Clerk of the _____ on

_____ (Date)

This Agreement 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: _____

PRESENTED TO THE BOARD OF TRANSPORTATION ITEM O: _____