NORTH CAROLINA

DURHAM COUNTY

TRANSPORTATION IMPROVEMENT PROJECT – LANDSCAPE AGREEMENT

DATE: 3/11/2011

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

TIP #: U-4009, U-4012 & B-3450

AND

WBS Elements: 35010.3.2 & 33070.3.2

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, a local government entity, hereinafter referred to as the "Municipality".

W I T N E S S E T H:

WHEREAS, the Municipality has requested the Department to include certain landscape plantings in conjunction with Project U-4009, U-4012 & B-3450, in Durham County; and,

WHEREAS, the Department and the Municipality have also agreed to the maintenance responsibilities for the plantings of said parties as hereinafter set out; 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 THE PROJECT

1. The Project consists of landscape plantings along US 15-501 from I-40 to SR 1116 (Garrett Road) and along SR 1126 (Service Road) which parallels to US 15-501 in Durham County.

PLANNING AND DESIGN

2. The Department shall, without expense to the Municipality, develop the landscape design and prepare the landscape plans and specifications in accordance with the Department's standard landscaping polices and procedures for highways. The landscape plans must be approved by the Department and the Municipality before planting. Planting will be accomplished upon completion of the construction contract and at the allowable percentage rate of 0.5% of the final estimate or

an estimated cost of $112,390 for Project 33070.3.2 (B-3450). Planting will be accomplished upon completion of the construction contract and at the allowable percentage rate of 0.75% of the final estimate or an estimated cost of $15,623 for Project 35010.3.2 (U-4009/U-4012).

RIGHT OF WAY AND UTILITIES

3. The Department shall, without expense to the Municipality, prepare the site and furnish and install the plantings in accordance with the approved project plans and provide a one-year establishment period. All work shall be performed within the existing right of way and in accordance with Departmental standards, policies and procedures. In the event any additional right or way or construction easement is required for the plantings, the Municipality shall provide said additional right of way/or easement at no expense or liability whatsoever to the Department. Acquisition of any right of way and/or easements shall be performed in accordance with all State and Federal procedures.

4. The Department does not anticipate the need to relocate and adjust any municipally-owned utilities at this time. If during the project it becomes necessary to adjust and relocate the municipally-owned utilities the Municipality, at no expense to the Department, shall be responsible for the relocation and adjustment of all utilities in conflict with the landscape planting.

CONSTRUCTION

5. The Department shall install, or cause to be installed, said plantings in accordance with the plans and specifications of said project as filed with, and approved by, the Department.

   A. Any changes, revisions, or alterations to the landscaping shall require prior review and approval by the Department's Division Engineer prior to the work being initiated.

   B. Upon completion of the planting, the Department shall maintain said planting areas for a period of one (1) calendar year, at no expense to the Municipality.

MAINTENANCE

6. At the end of the one (1) year establishment period, the Department shall notify the Municipality, in writing, of the date the Municipality shall assume responsibility for all maintenance and replacement of the landscape materials. Maintenance shall include, but not be limited to, the following: watering, mulching, pruning, fertilizing, weeding, pest control, mowing, and replacing plant materials. All cost of maintenance shall be borne by the Municipality.

7. The Municipality agrees to continually maintain all plantings in accordance with generally accepted horticultural practices. The Municipality agrees to mow areas where landscaping will prohibit the ability of NCDOT to effectively mow without damage to plantings or equipment as mutually identified by the Department's Division Engineer and the Municipality. The Department shall have the right to periodically inspect the maintenance practices being utilized by the Municipality.

8. If the Department determines that the Municipality is not properly maintaining the plantings, the Department shall notify the Municipality. If proper maintenance is not performed by the Municipality within a reasonable time after notification, the Municipality agrees that the Department shall perform the necessary maintenance, or at the Department's option, shall return the planted area to a natural condition (i.e. seeded and mulched, etc.). It is further agreed that the costs of the restoration shall be reimbursed to the Department by the Municipality. Reimbursement to the Department shall be made in one final payment within sixty (60) days of invoicing by the Department. The Department shall charge a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147.86.23.

9. If the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove 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 North Carolina General Statute, Section 136-41.1, until such time as the Department has received pay in full.

10. In the event these plantings require relocation or removal for highway construction, re-construction, maintenance or safety, the Municipality shall be given the option to remove or relocate any plantings it considers salvageable immediately upon notification by the Department, at no expense to the Department.

TRAFFIC

11. The Municipality, at no expense to the Department, shall provide traffic control during landscape maintenance procedures as required by the latest revision of the "Manual for Uniform Traffic Control Devices.

ADDITIONAL PROVISIONS

12. The Department, at the end of the one (1) year establishment period, will not be responsible for any damages to the plantings which may be done by third parties.

13. Provisions for routine mowing shall be handled under separate agreement between the Department's Division Engineer and the Municipality.

14. It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (Federal or State). The Municipality certifies, by signature of this agreement, 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 Department or Agency.

15. To the extent authorized by state and federal claims statutes, each party shall be responsible for its respective actions under the terms of this agreement and save harmless the other party from any claims arising as a result of such actions.

16. 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).

17. 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.

IT IS UNDERSTOOD AND AGREED upon that the approval of the Project by the Department is subject to the conditions of this Agreement.

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: _____

TITLE: _____

DATE: _____

CITY OF DURHAM

BY: _____

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."

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

BY: _____
(FINANCE OFFICER)

(SEAL)

Federal Tax Identification Number

_____

Remittance Address:
City of Durham

_____

_____

DEPARTMENT OF TRANSPORTATION

BY: _____

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (Date)