

NORTH CAROLINA  
DURHAM COUNTY

**MUNICIPAL AGREEMENT**

DATE: 1/24/2012

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

Project: W-5110

AND

WBS Elements: 41874.3.1

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";

W I T N E S S E T H:

WHEREAS, the Department has plans to make certain street and highway constructions and improvements within the Municipality under Project W-5110, in Durham County; and,

WHEREAS, the Department and the Municipality have agreed that the municipal limits, 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, 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, Section 136-66.1, Section 160A-296 and 297, Section 136-18, and Section 20-169, to participate in the planning and construction of a Project approved by the Board of Transportation for the safe and efficient utilization of transportation systems for the public good; 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, it is agreed as follows:

## **SCOPE OF THE PROJECT**

1. The Project consists of the relocation of fire hydrant and water meters in conjunction with the widening of NC 55 (Alston Avenue) at E. Lawson Street in Durham.

## **PLANNING, DESIGN AND RIGHT OF WAY**

2. The Department shall prepare the environmental and/or planning document, and obtain any environmental permits needed to construct the Project, and prepare the Project plans and specifications needed to construct the Project. All work shall be done in accordance with departmental standards, specifications, policies and procedures.
3. The Department shall be responsible for acquiring any needed right of way required for utility relocations, with reimbursement from the Municipality. Acquisition of right of way shall be accomplished in accordance with the policies and procedures set forth in the North Carolina Right of Way Manual.

## **FUNDING**

4. The Municipality shall reimburse the Department one hundred percent (100%) of the actual cost for relocating the fire hydrant and water meters for the Project. The estimated cost to the Municipality is \$38,000.00. It is understood by both parties that this is an estimated cost and is subject to change. The Municipality shall reimburse the Department for said costs as follows:
  - A. Upon completion of the work, the Department shall submit an itemized invoice to the Municipality for cost incurred. Billing will be based upon the actual bid prices and actual quantities used.
  - B. Reimbursement shall be made by the Municipality in one final payment within sixty (60) days of said invoice.
  - C. If the Municipality does not pay said invoice within sixty (60) days of the date of the invoice, the Department shall charge a late payment penalty and interest on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105.241.21.

- D. Any cost incurred due to additional utility work requested by the Municipality after award of the construction contract, shall be solely the responsibility of the Municipality. The Municipality shall reimburse the Department 100% of the additional utility cost.
5. 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.

## **CONSTRUCTION AND MAINTENANCE**

7. The Department 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 Department shall administer the construction contract for said Project.
8. Upon completion of the Project, the Department shall furnish the Municipality with complete sets of "Plan of Record" and/or "As Built" plans as requested.
9. It is further agreed that upon completion of the Project, the Department shall be responsible for all traffic operating controls and devices which shall be established, enforced, and installed and maintained 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 departmental criteria.
10. Upon completion of the Project, the roadway improvement(s) shall be a part of the State Highway System and owned and maintained by the Department.

## **ADDITIONAL PROVISIONS**

11. 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.

12. 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.

13. All terms of this Agreement are subject to available departmental funding and fiscal constraints.

14. 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).

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 local governing body of the City of Durham as attested to by the signature of Clerk \_\_\_\_\_ of said governing body on \_\_\_\_\_ (Date)

(SEAL)

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

\_\_\_\_\_  
(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)