

NORTH CAROLINA  
DURHAM COUNTY

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

August 16, 2012

AND

CITY OF DURHAM

MUNICIPAL AGREEMENT  
(Church Street Extension Sidewalk)  
PROJECT: U-4716B  
U-4716A/C  
WBS: 54000.3.STR01T4A (CONST)

THIS MUNICIPAL 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 "NCDOT," and the City of Durham, a local government entity, hereinafter referred to as the "Municipality." Each of NCDOT and the Municipality shall be hereinafter referred to individually as a "Party," and collectively, as "Parties."

W I T N E S S E T H:

WHEREAS, NCDOT plans to eliminate redundant and/or unsafe at-grade rail-highway crossings on a statewide basis as part of a comprehensive effort to improve and promote safer and more efficient rail and highway operations along heavily used railroad corridors; and

WHEREAS, based on information collected by NCDOT regarding safety issues at at-grade railroad crossings statewide, NCDOT has determined that a grade separation is required at the at-grade crossing on Hopson Road (SR 1978) in Durham, North Carolina; and

WHEREAS, the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) established competitive Federal grant programs for funding high speed intercity passenger rail (HSIPR) capital improvements and the American Recovery and Reinvestment Act of 2009 (ARRA) provides for funding for the HSIPR programs established in PRIIA; and

WHEREAS, on March 21, 2011, NCDOT and the Federal Railroad Administration (FRA) executed a Grant Cooperative Agreement in the amount \$520,000,000.00 ("ARRA Award") for improvements in North Carolina within and along certain rights-of-way owned by NCRP, including improvements that are necessary to implement additional passenger service, and more specifically including the Hopson Road Grade Separation Project ("Project Work"); and

WHEREAS, as part of the Project Work, NCDOT will relocate a portion of Church Street (SR 1980), which will extend to tie into the existing Hopson Road (SR 1978) and eliminate the need for the at-grade crossing on Church Street (SR 1980); and

WHEREAS, the Municipality has requested that NCDOT add sidewalks to both sides of the newly relocated Church Street (SR 1980) from it's tie-in on existing Church Street to Hopson Road matching the existing sidewalk on the previously built section of Keystone Park Drive; and

WHEREAS, the Municipality, by its governing body, has approved the construction of the sidewalk project and, in addition to funding sources provided by NCDOT, the Municipality shall participate in the funding of the Project as set out herein below as approved by its governing authority; and

WHEREAS, subject to reimbursement by the Municipality, NCDOT has agreed to construct the sidewalks; and

WHEREAS, upon NCDOT's completion of the construction of the Project Work, the Municipality has agreed to accept ownership and maintenance responsibilities for sidewalks on the newly relocated portion of Church Street (SR 1980) from existing Church Street to Hopson Road, at no expense or liability whatsoever to NCDOT; and

WHEREAS, the Municipality understands that this Project is contingent upon the permanent closing of the at-grade crossing on existing Church Street (SR 1980); and

WHEREAS, NCDOT has programmed funding in the approved Transportation Improvement Program (TIP) for the Project; and

WHEREAS, this Municipal Agreement is made under the authority granted to NCDOT by the North Carolina General Assembly including, but not limited to, the following legislation: N.C.G.S. § 136-18 and § 136-20, to participate in the planning and construction of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Municipal Agreement states the promises and undertakings of each Party as herein provided, and the Parties do hereby covenant and agree, each with the other, as follows:

## **I. SCOPE OF PROJECT**

The Project shall consist of designing and constructing sidewalks along both sides of the portion of Church Street that is being extended pursuant to the Hopson Road Grade Separation Project: U-4716 involving the construction of the Church Street Extension (SR 1980) from existing Church Street (SR 1980) to Hopson Road.

## **II. DESIGN**

NCDOT, its agents and/or contractors, shall prepare the Project's plans, specifications, permits, and professional estimate of costs (PS&E package) needed to construct the Project. All work shall be done in accordance with applicable Federal and State standards, specifications, policies, and procedures. Project plans shall be submitted to the Municipality, NSR, and NCRR for review and comment.

## **III. ENVIRONMENTAL/PLANNING DOCUMENTATION**

NCDOT, its agents and/or contractors, shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance

with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. If required, NCDOT shall design an erosion control plan for the Project.

#### **IV. RIGHT-OF-WAY (ROW)**

##### **A. Church Street Extension**

NCDOT, its agents and/or contractors, at no cost to the Municipality, shall be responsible for acquiring the right-of-way/property required for the extension of Church Street (SR 1980).

##### **B. Acquisition**

Acquisition of all right-of-way (ROW) activities, including acquisition and relocation, shall be accomplished in accordance with the following: 23 C.F.R. § 710(B), 49 C.F.R. § 24, and N.C.G.S. § 133-5 through 133-18 (Relocation Assistance), all of which are incorporated by reference; and the North Carolina Department of Transportation Right-of-Way Manual.

#### **V. UTILITIES**

##### **A. Relocation of Utilities**

The Municipality shall exercise any rights which it may have under any franchise to relocate and adjust any telephone, telegraph, and electric power lines, underground cables, gas lines, and other pipelines or conduits.

##### **B. Relocation of Municipally-Owned Utilities by NCDOT**

The Municipality requests the NCDOT include the relocation and/or adjustment of municipally-owned utilities in its construction contract provisions and to prepare and secure any necessary permits. The Municipality shall reimburse the Department for said relocation. The current estimated cost of this relocation is one hundred seventy-six thousand, three hundred, and twenty-three dollars [\$176,323.00] = [B (\$28,187) + A/C (\$146,136)] based on preliminary plans. Reimbursement will be based on final project plans and actual costs of relocation, as set forth in a separate Utility Agreement prepared to reflect the reimbursement terms and cost estimate.

#### **VI. CONSTRUCTION**

NCDOT, its agents and/or contractors, shall construct the Project, including sidewalks, in accordance with NCDOT's standards and specifications and approved Project plans.

#### **VII. FUNDING**

The Municipality shall participate in the Betterment costs of the Project as follows:

- A. Upon completion of the work, the Municipality shall reimburse NCDOT fifty percent (50%) of the actual cost, including administrative costs, of the work associated with the construction of the sidewalks. The estimated cost of the sidewalks is forty-five thousand dollars (\$45,000.00) and the estimated cost to the Municipality is twenty-two

thousand five hundred dollars (\$22,500.00). Both Parties understand that this is an estimated cost and is subject to change.

- B. Alternatively, the Municipality is requesting approval from the Transportation Advisory Committee (TAC) of the Durham-Chapel Hill-Carrboro (DCHC) Metropolitan Planning Organization (MPO) to allocate funds for the sidewalks. Based on the approval from the TAC, this Municipal Agreement will approve the option for funding provided by the MPO's State Transportation Program Direct Attributable Funds allocation (STP-DA) with written notification from the Municipality to the Division Engineer.
  - 1. If the allocation for STP-DA funds is approved, NCDOT shall initially allocate thirty-six thousand dollars (\$36,000.00) from the DCHC MPO's STP-DA allocation. The thirty-six thousand dollars (\$36,000.00) represents eighty percent (80%) of the estimated forty-five thousand dollars (\$45,000.00) for the sidewalk betterment cost. The Municipality shall be responsible for providing twenty percent (20%) which is estimated at nine thousand dollars (\$9,000.00) in matching funds for the Direct Attributable funds authorized. Any additional costs shall be funded by the Municipality. Any unobligated Direct Attributable Funds remaining shall revert back to the DCHC MPO Direct Attributable Fund Allocation. If the TAC and the Municipality elect to authorize additional allocations for this Project from the DCHC MPO, STP-DA, written notification shall be sent to the Program Development Branch for approval ninety (90) days prior to completion of the Project and the Municipality shall make additional allocations consistent with such authorizations.
  - 2. Any and all costs not reimbursed by the Federal Highway Administration (FHWA) due to non-compliance by the Municipality shall be the responsibility of the Municipality. In the case of non-reimbursement by FHWA, the Municipality will reimburse NCDOT for such costs.

## **VII. REIMBURSEMENT**

Under either alternative, in the event the Municipality is obligated to reimburse NCDOT, the Municipality shall reimburse NCDOT in accordance with the following:

### **A. Submittal of Payment**

The Municipality shall reimburse NCDOT in one (1) payment. This payment shall be due and payable thirty (30) days after completion and acceptance of the Project and receipt of an invoice from NCDOT to the Municipality. Acknowledgement of completion and acceptance of the project shall be made upon receipt by the Municipality of As-Built Drawings from NCDOT, and inspection of all project work, and written concurrence from the Municipality that all work is acceptable. Upon receipt of said notice of completion and acceptance from the Municipality, NCDOT shall immediately issue an invoice based upon actual costs incurred in constructing the project. In the event that the Municipality fails to provide a written notice of completion and acceptance within thirty (30) days of receipt of the As-Built Drawings, NCDOT may invoice the municipality. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with the N.C.G.S. § 147-86.23.

B. Failure to Submit Payment

In the event the Municipality fails for any reason to pay NCDOT in accordance with the provisions for payment herein above provided, N.C.G.S. § 136-41.3 authorizes NCDOT to withhold so much of the Municipality's share of funds allocated to said Municipality by N.C.G.S. § 136-41.1 until such time as NCDOT has received payment in full.

**VIII. MAINTENANCE**

The Municipality, at no expense or liability to NCDOT, shall assume all maintenance responsibilities for the sidewalks.

**IX. OTHER PROVISIONS**

A. Indemnification of Department

To the extent authorized by State and Federal claims statutes, each Party to this Municipal Agreement shall be responsible for its respective actions under the terms of this Municipal Agreement, and indemnify and save harmless the other Party for any claims for payment, damages, and liabilities arising as a result of such action. NCDOT, its agents and/or contractors, shall not be responsible for any damages or claims, which may be initiated by third parties.

B. Availability of Funds

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

C. Termination of Project

NCDOT shall have the right to abandon the Project at any time it sees fit prior to the time the Municipality has been called upon to perform any part of its agreement.

**X. ETHICS PROVISION**

The Parties acknowledge the requirements of N.C.G.S. § 133-32. In addition, NCDOT, its agents and/or contractors, are bound by the provisions of Executive Order 24 (issued by Governor Perdue on October 1, 2009), which bans State employees from accepting or receiving gifts. 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, Cultural Resources, Environment and Natural Resources, Health and Human Services, Public Safety, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (i) have a contract with a governmental agency; or
- (ii) have performed under such a contract within the past year; or
- (iii) anticipate bidding on such a contract in the future

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and N.C.G.S. § 133-32.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by NCDOT is subject to the conditions of this Municipal Agreement, and that no expenditures of funds on the part of NCDOT will be made until the terms of this Municipal Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Municipal Agreement has been executed, in duplicate originals, the day and year heretofore set out, on the part of NCDOT and the Municipality by authority duly given.

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 Agreement, you attest, for your entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

WITNESS

CITY OF DURHAM

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

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

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

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

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

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

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

SEAL

Approved by the City of Durham governing board as attested to by the signature of

\_\_\_\_\_  
Clerk of Governing Board, \_\_\_\_\_  
(Date)

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

\_\_\_\_\_  
City Finance Director

FEDERAL IDENTIFICATION NUMBER

\_\_\_\_\_  
City of Durham

MAILING ADDRESS

City of Durham  
Department of Transportation  
101 City Hall Plaza  
Durham, NC 27701  
ATTN: Mark D. Ahrendsen  
\_\_\_\_\_  
Director of Transportation

IN WITNESS WHEREOF, this Municipal Agreement has been executed, in duplicate originals, the day and year heretofore set out, on the part of NCDOT and the Municipality by authority duly given.

ATTEST

NORTH CAROLINA DEPARTMENT  
OF TRANSPORTATION

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

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

NAME: Sarah Mitchell

NAME: Paul C. Worley

TITLE: Secretary to Board  
of Transportation

TITLE: Assistant Director for Engineering  
and Safety, Rail Division

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

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

SEAL

MAILING ADDRESS

North Carolina Department of Transportation  
Rail Division, Engineering & Safety  
1556 MSC  
Raleigh, North Carolina 27699-1556  
ATTN: Jahmal Pullen, PE  
Engineering Services Manager

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