

DURHAM COUNTY

**TRANSPORTATION IMPROVEMENT PROJECT –  
MUNICIPAL AGREEMENT WITH BETTERMENTS**

DATE: 10/13/2014

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

TIP #: U-3308

AND

WBS Elements: 34915.3.FR1

CITY OF DURHAM

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 "Department" and the City of Durham, a local government entity, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, the Department has plans to make certain street and highway constructions and improvements within the Municipality under Project U-3308, 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 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, 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 widening improvements on NC 55 (Alston Avenue) from NC 147 (Buck Dean Freeway) to north of US 70 Bus/NC 98 (Holloway Street). Included within the Project are certain betterments including sidewalks, brick pavers, stained and stamped concrete crosswalks, and concrete headers for crosswalks hereinafter referred to as "Betterments" in Durham.

## **PLANNING AND DESIGN**

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.

## **RIGHT OF WAY**

3. The Department shall be responsible for acquiring any needed right of way required for the widening improvements. 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.
4. It is understood by both parties that all work for the Betterments shall be performed within the existing right of way. However, should it become necessary, the Municipality, at no expense or liability whatsoever to the Department, shall provide any additional needed right of way and or construction easements for the construction of the Betterments, and remove from said rights of way all obstructions and encroachments of any kind or character. Acquisition of any needed right of way shall be performed in accordance with the following state and federal policies and procedures, "Right of Way Acquisition Policy and Land Acquisition Policy, contained in the Federal-Aid Policy Guide, Part 712, Subpart B", and the North Carolina Right of Way Manual (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970). The Department shall be indemnified and held harmless from any and all damages and claims for damages associated with the acquisition of any construction easements and/or right of way needed for the Betterments.

## **UTILITIES**

5. Provisions for adjustment and relocation of water and/or sewer lines will be prepared under a separate Use and Occupancy Agreement. The Municipality may exercise any rights which it may have under any franchise to effect all necessary changes, adjustments, and relocations of

telephone, telegraph, and electric power lines; underground cables, gas lines, and other pipelines or conduits; or any privately - or publicly-owned utilities.

## **CONSTRUCTION**

6. 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. At the request of the Municipality, and in accordance with the Department's "Guidelines for Planning Pedestrian Facilities", the Department shall include provisions in its construction contract for the construction of sidewalks, brick pavers, stained and stamped concrete crosswalks, and concrete headers for crosswalks on/or along from NC 147 EB Ramp to US 70 Business/NC 98 in Durham. Said work shall be performed in accordance with Departmental policies, procedures, standards and specifications, and the following provisions.

## **MAINTENANCE**

7. Upon completion of the Project:
  - A. 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.
  - B. The improvement(s) shall be a part of the State Highway System and owned and maintained by the Department.
8. The Municipality, at no expense to the Department, shall assume all maintenance responsibilities for the Betterments and release the Department from all liability relating to such maintenance.

## **BETTERMENT COSTS AND FUNDING**

9. The Municipality shall participate in the Betterment costs of the Project as follows:
  - A. In accordance with the *Pedestrian Policy Guidelines*, the Municipality shall reimburse the Department fifty percent (50 %), of the actual cost, including administrative costs, of the construction of the sidewalks. The Department shall participate in fifty percent (50%) of the cost of the sidewalks of the actual construction cost of that portion of the project

within the corporate limits, where new sidewalks are to be installed. The estimated cost of the sidewalks is \$154,732. The estimated cost to the Municipality is \$77,366. Both parties understand that this is an estimated cost and is subject to change.

For all other Betterments, the Municipality shall participate as follows:

Brick Pavers	100%	\$36,225
Stained and Stamped Crosswalks	100%	\$58,161
Concrete Header for Crosswalks	100%	\$37,519

**TOTAL ESTIMATED COST TO THE MUNICIPALITY: \$209,271.** Both parties understand that these are estimated costs and are subject to change.

- B. Upon completion of the Project, the Department will invoice the Municipality for their share of the actual costs of the Betterments. Reimbursement to the Department shall be made in one final payment within sixty days of invoicing by the Department. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS § 147-86.23.
- C. 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.

10. Alternatively, the Municipality is requesting approval from the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC MPO) to allocate funding from the (DCHC MPO) Surface Transportation Program Direct Attributable (STP-DA) funds allocation for this project.

- A. Upon approval from the DCHC MPO Board, the Department shall authorize \$229,310 of STP-DA funds to this Project. The \$229,310 represents 80% of the \$286,637 betterment cost. Any un-used STP-DA funds shall revert back to the DCHC MPO.
- B. The Municipality shall be responsible for funding the 20% matching funds for the STP-DA funds authorized. The Municipality shall be responsible for funding all costs that exceed \$286,637 and all costs not reimbursed by the Federal Highway Administration.

- C. Upon completion of the Project, the Department will calculate the actual costs of the Betterments:
- (1) If the actual costs are less than the estimated cost, the remaining STP-DA funding will return to the DCHC MPO, and the Municipality shall be billed for the 20% non-federal match of the actual costs.
  - (2) If the actual costs are more than the STP-DA funds, then the DCHC MPO and the Municipality may elect to allocate additional funds for this project from the DCHC MPO. The Department will invoice the Municipality for the 20% non-federal match to the STP-DA funds. If no additional STP-DA funds are available, the Municipality shall be responsible for all costs that exceed the federal funds and the non-federal match.
- D. Reimbursement to the Department shall be made in one final payment within sixty days of invoicing by the Department. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS § 147-86.23.
- E. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment herein above provided, NCGS § 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by NCGS § 136-41.1 until such time as the Department has received payment in full under the reimbursement terms set forth in this Agreement.

## **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. This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein.
15. The parties hereby acknowledge that the individual executing the Agreement on their behalf is authorized to execute this Agreement on their behalf and to bind the respective entities to the terms contained herein and that he has read this Agreement, conferred with his attorney, and fully understands its contents.
16. A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the parties agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.
17. 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 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: CITY OF DURHAM

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

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

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

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

(SEAL)

BY: \_\_\_\_\_  
(FINANCE OFFICER)

Federal Tax Identification Number

\_\_\_\_\_

Remittance Address:

City of Durham

\_\_\_\_\_

\_\_\_\_\_

DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
(CHIEF ENGINEER)

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

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