

ATTACHMENT 1

NORTH CAROLINA
DURHAM & ORANGE COUNTIES

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

Revised
9/14/07

AND

CITY OF DURHAM

MUNICIPAL AGREEMENT
PROJECT: EB-4707

AND

TOWN OF CHAPEL HILL

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", the City of Durham and the Town of Chapel Hill, both a municipal corporations, hereinafter referred to as the "Municipalities".

WITNESSETH:

WHEREAS, the Department and the Municipalities propose to make certain street and highway constructions and improvements within the Municipalities under Project EB-4707, Durham and Orange Counties; said Project to consist of the construction of bicycle and pedestrian facilities along SR 2220 in Durham County (Old Chapel Hill Rd) and SR 1838 in Orange County (Old Durham Rd) located within the Durham-Chapel Hill-Carrboro (DCHC) Metropolitan Planning Organization (MPO) area; and,

WHEREAS, the Department and the Municipalities are authorized by the following legislation: G. S. 136-66.3 to jointly participate in the planning and construction of a project identified in the Department's Transportation Improvement Program; and,

WHEREAS, the Municipalities have requested to use Surface Transportation Program Direct Attributable (STP-DA) Funds in the construction of the bicycle and pedestrian facilities; and,

WHEREAS, the Transportation Advisory Committee (TAC) has authorized the Durham-Chapel Hill-Carrboro (DCHC) Metropolitan Planning Organization (MPO) to approve the allocation of the Surface Transportation Program Direct Attributable (STP-DA) Funds to be used in the construction of the bicycle and pedestrian facilities; and,

WHEREAS, the Department has agreed to administer the disbursement of the Durham-Chapel Hill-Carrboro (DCHC) Metropolitan Planning Organization's (MPO) Surface Transportation Program Direct Attributable (STP-DA) Funds allocation on behalf of Federal Highway Administration to the Municipalities for the construction of the bicycle and pedestrian facilities in accordance with the project scope of work and in accordance with the provisions hereinafter set forth in this Agreement; and,

WHEREAS, the Municipalities and the Department are authorized by the following legislation: General Statutes of North Carolina, Section 136-66.1, Sections 160A-296 and 297, Section 136-18, and Section 20-169, to provide adequate traffic operating controls and control devices for the safe and efficient utilization of highways; and,

WHEREAS, the City and Town Council of the Municipalities have approved the construction of said Project in accordance with the plans and specifications to be prepared by the Department and have agreed to participate in certain costs thereof in the manner and to the extent as hereinafter set out and have further agreed to the establishment and maintenance of certain traffic operating controls as hereinafter set out.

NOW, THEREFORE, in consideration of the premises and the benefits accruing to the Municipalities as the result of the construction of said Project, Durham and Orange Counties, it is agreed as follows:

1. This Project consists of the construction of bicycle and pedestrian facilities along SR 2220 (Old Chapel Hill Road)/SR 1838 (Old Durham Road) from SR 1116 (Garrett Road) in Durham County to US 15-501 in Orange County.

2. The Department shall be responsible for all phases of the Project including planning, design, right of way, utilities, construction and contract administration in accordance with Departmental standards, specifications, policies and procedures. In addition, The "Old Durham/Chapel Hill Road Bicycle and Pedestrian Facilities Study" approved by the TAC of the DCHC MPO on February 8, 2006 shall serve as a guide to the Department in the planning and design of the Project.

3. Funding for this Project shall be provided as follows:

(A) At the request of the Municipalities, and authorization from the TAC of the Durham-Chapel Hill-Carrboro (DCHC) Metropolitan Planning Organization (MPO), the Department shall allocate an amount not to exceed \$400,000 in Surface Transportation Program (STP-EB) funds, plus an additional \$2,742,400 from the Durham-Chapel Hill-Carrboro (DCHC) Metropolitan Planning Organization's (MPO) Surface Transportation Program Direct Attributable Funds allocation. The \$2,742,400 represents 80% of the \$3,428,000 estimated amount that will be required for the subject Project from STP-DA funds. The Municipalities are responsible for providing the 20% matching funds, (estimated at \$685,600) for the Direct Attributable Funds authorized. Any unobligated Direct Attributable Funds remaining shall revert back to the DCHC Metropolitan Planning Organization (MPO) Direct Attributable Fund Allocation. If the TAC and the Municipalities elect to authorize additional allocations for this Project from the Durham-Chapel Hill-Carrboro (DCHC) MPO's Surface Transportation Program Direct Attributable Funds allocation, written notification shall be sent to the Department's 5th Division Engineer for approval ninety (90) days prior to completion of the Project.

(B) The Municipalities shall be responsible for funding the 20% match (\$685,600) for the Direct Attributable Funds authorized, all costs which exceed \$3,828,000 and all eligible

costs not reimbursed by the Federal Highway Administration (FHWA) due to non-compliance by the Municipalities. The Durham share of the 20% match is estimated to be \$445,640. The Chapel Hill share of the 20% match is estimated to be \$239,960. The Municipalities agree that if the FHWA should not participate in certain costs because of noncompliance with Federal and/or State regulations by the Municipalities, they will reimburse the Department for such costs. All costs not reimbursed to the Department by the FHWA for non-compliance by the Municipalities shall be borne by the Municipalities. In the event any monies are due to the Department, said funds shall be submitted within sixty (60) days of receiving an invoice from 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.

(C) Preliminary Engineering costs will be based on a 65/35% split between Durham and Chapel Hill. Right of Way costs for Chapel Hill and Durham will be based on actual dollars expended for Right of Way east and west of SR 1113 (Pope Road). Construction costs for Chapel Hill and Durham will be prorated based on the Engineer's estimate at the time of letting, with SR 1113 being the dividing line. Whereas, the western right-of-way line of SR 1113 (Pope Road) has been agreed to as the dividing line between Chapel Hill and Durham for the purposes of assigning costs related to this agreement because the western right-of-way line of Pope Road signifies the annexation boundary between the two Municipalities. Prior to the time of letting, the Department will request and obtain the Municipalities' written concurrence with the Engineer's estimate, including any revisions and updates to the estimated planning and environmental, right of way, and construction costs to each Municipality. The Project funding is as follows:

Planning and Environmental FFY '08:	\$ 450,000
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Right of Way FFY '08:	\$ 625,000
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Construction FFY '09:	\$1,039,000
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Construction FFY '10: \$1,714,000

Total Cost (DA Funding, Local Match & STP-EB): \$3,828,000

(D) In the event the Municipalities fail for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, the Municipalities hereby authorize the Department to withhold so much of the Municipalities share of funds allocated to said Municipalities by the General Statutes of North Carolina, Section 136.41.1, until such time as the Department has received payment in full.

4. 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.

5. It is further agreed that, upon completion of the Project, the Department shall establish, maintain and enforce traffic operating controls on Project EB-4707 in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways, the Policy on Street and Driveway Access to North Carolina Highways dated January 9, 1987, or a subsequent revision thereof, and all Departmental criteria.

6. Subject to successful completion of the planning document and all required environmental work, the Department will construct the Project in accordance with the plans and specifications adopted therefore in consultation with the Municipalities or as altered or amended by the Department in consultation with the Municipalities. The Department shall have the right to abandon the Project at any time before the Municipality has been called upon to perform any part of its agreement.

7. The Municipalities, at their own expense, shall assume all liability and maintenance responsibilities for said pedestrian facilities upon completion of the Project.

8. 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 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 Municipalities.

IN WITNESS WHEREOF, this Agreement has been executed, in triplicate, the day and year heretofore set out, on part of the Department and the Municipalities by authority duly given, as evidenced by the attached certified copy of Resolution, Ordinance or Charter Provision, as the case may be.

L.S.

ATTEST:

CITY OF DURHAM

(SEAL)

BY: _____

TITLE: _____

DATE: _____

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

Municipal Finance Officer

Federal Tax Id Number:

Remittance Address:
City of Durham

L.S.
ATTEST:

TOWN OF CHAPEL HILL

BY: _____

(SEAL)

TITLE: _____

DATE: _____

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

Municipal Finance Officer

Federal Tax Id Number:

Remittance Address:
Town of Chapel Hill

DEPARTMENT OF TRANSPORTATION

BY: _____
STATE HIGHWAY ADMINISTRATOR

DATE: _____

APPROVED AS TO EXECUTION:

BY: _____
ASSISTANT ATTORNEY GENERAL

COPY OF RESOLUTION PASSED BY THE CITY COUNCIL
OF THE CITY OF DURHAM, NORTH CAROLINA

A motion was made by _____ and seconded by
_____ for the adoption of the following Resolution, and upon being
put to a vote was duly adopted:

WHEREAS, the North Carolina Department of Transportation and the City of Durham
propose to make certain street and highway improvements to consist of the construction of
bicycle and pedestrian facilities; and,

WHEREAS, the Transportation Advisory Committee (TAC) has authorized the Durham-
Chapel Hill-Carrboro Metropolitan Planning Organization (MPO) to approve the allocation of the
Surface Transportation Program Direct Attributable (DA) Funds to be used in the construction of
the bicycle and pedestrian facilities; and,

WHEREAS, the Department of Transportation and the City of Durham propose to enter
into an agreement for construction of the aforementioned highway improvements whereby the
Department agrees to be responsible for planning, design, right of way, utilities, construction
and contract administration; and,

WHEREAS, said agreement further provides for the City of Durham to provide their
portion of the 20% matching funds, (estimated at \$445,640) for the construction of the Project in
accordance with the terms of the agreement.

NOW, THEREFORE, BE IT RESOLVED that said Project, Durham County, is hereby
formally approved by the City Council of the City of Durham and that the City Manager and
Clerk of this Municipality are hereby empowered to sign and execute the Agreement with the
Department of Transportation.

I, _____, Clerk of the City of Durham, do hereby certify that the
foregoing is a true and correct copy of excerpts from the Minutes of the meeting of the City
Council duly held on the ___ day of _____, 20__.

WITNESS, my hand and the official seal of said Municipality on this the _____
_____, 20__

(SEAL)

CLERK
CITY OF DURHAM
NORTH CAROLINA

COPY OF RESOLUTION PASSED BY THE TOWN COUNCIL
OF THE TOWN OF CHAPEL HILL, NORTH CAROLINA

A motion was made by _____ and seconded by
_____ for the adoption of the following Resolution, and upon being
put to a vote was duly adopted:

WHEREAS, the North Carolina Department of Transportation and the Town of Chapel Hill propose to make certain street and highway improvements to consist of the construction of bicycle and pedestrian facilities; and,

WHEREAS, the Transportation Advisory Council (TAC) has authorized the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (MPO) to approve the allocation of the Surface Transportation Program Direct Attributable (DA) Funds to be used in the construction of the bicycle and pedestrian facilities; and,

WHEREAS, the Department of Transportation and the Town of Chapel Hill propose to enter into an agreement for construction of the aforementioned highway improvements whereby the Department agrees to be responsible for planning, design, right of way, utilities, construction and contract administration; and,

WHEREAS, said agreement further provides for the Town of Chapel Hill to provide their portion of the 20% matching funds, (estimated at \$239,960) for the construction of the Project in accordance with the terms of the agreement.

NOW, THEREFORE, BE IT RESOLVED that said Project, Orange County, is hereby formally approved by the Town Council of the Town of Chapel Hill and that the Town Manager and Clerk of this Municipality are hereby empowered to sign and execute the Agreement with the Department of Transportation.

I, _____, Clerk of the Town of Chapel Hill, do hereby certify that the foregoing is a true and correct copy of excerpts from the Minutes of the meeting of the Town Council duly held on the ___ day of _____, 20__.

WITNESS, my hand and the official seal of said Municipality on this the _____
_____, 20__

(SEAL)

CLERK
TOWN OF CHAPEL HILL
NORTH CAROLINA