

NORTH CAROLINA
ORANGE COUNTY

10/26/07

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

LANDSCAPE AGREEMENT

AND

PROJECT: E-2973 G

TOWN OF CHAPEL HILL

WBS ELEMENT: 3707.3.06

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 Town of Chapel Hill, a municipal corporation, hereinafter referred to as the "Municipality".

W I T N E S S E T H:

WHEREAS, Section 1201 of the Transportation Equity Act of the 21st Century (TEA-21) requires that the Surface Transportation Program funds be available for transportation enhancement activities in their statewide transportation improvement programs; and,

WHEREAS, the Municipality has requested enhancement funding for certain landscape plantings on US 15/501 at SR 1796 in Chapel Hill; and,

WHEREAS, the Department and the Municipality have also agreed to the maintenance of said plantings 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:

1. The project shall consist of certain landscape buffers on US 15/501 (Fordham Boulevard) at SR 1796 (Christopher Drive) in Chapel Hill; and
2. The Municipality shall 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 design and plans shall be submitted to the Department's 7th Division

Engineer for review and approval prior to any work being performed by the Municipality. The Department reserves the right to reject plant materials it deems to be excessive or not in reasonably close conformity with the materials used by the Department on its projects.

3. The Municipality shall prepare the site and furnish and install the plantings in accordance with the approved project plans. All work shall be performed within the existing right of way and in accordance with Departmental standards, policies and procedures.

4. The Municipality shall install said plantings in accordance with the plans and specifications of said project as filed with, and approved by, the Department. The Municipality shall enter into and shall administer the construction contract for said project and the procedures set out hereinbelow shall be followed:

(A) The Municipality shall cause to be performed, or will perform, all work required with its own forces.

(B) All preliminary and construction engineering, supervision, and labor pertaining to the landscape plantings will be furnished by the Municipality.

(C) The Department's 7th Division Engineer shall have the right to inspect, sample or test, and approve or reject any materials or construction methods used during the construction of the project. Prior to the final acceptance and payment by the Department, the Division Engineer shall have the right to make a final inspection of the completed work.

(D) Upon completion of the project, and prior to final acceptance and payment by the Department, the Municipality will furnish to the Department's 7th Division Engineer two (2) set of "As Installed" landscape plans.

(E) Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department to withdraw a portion or all participation in the project.

(F) The Municipality agrees to pursue the completion of the work covered by this Agreement as expeditiously as feasible and to complete all work within twelve (12) months of notice to proceed.

(G) Upon approval of the 7th Division Engineer, the Municipality may proceed with said work prior to execution of this Agreement.

(H) Letting of contract for construction and purchases shall be in accordance with North Carolina General Statute 143-129.

(I) All materials incorporated into the project and workmanship performed by the contractor shall be in reasonable close conformity with the Standards and Specifications of the Department.

(J) The Municipality will be responsible for ensuring that the contractor complies with all of the terms of the contract and any instructions issued by the Division Engineer as a result of any review or inspection made by said Division Engineer.

5 The Municipality, and/or its agent, shall comply with the following federal policies: (a) Conflict of Interest; (b) Equal Employment Opportunity; and (c) Title VI – Civil Rights Act of 1964.

DISADVANTAGED BUSINESS ENTERPRISE (POC AND MUNICIPALITIES):

(10-16-07)

SP1G62

Policy

It is the policy of the North Carolina Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in *49 CFR Part 26* shall have the equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by Federal Funds.

Obligation

The Contractor, subcontractor, and sub-recipient shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract. The Contractor shall comply with applicable requirements of *49 CFR Part 26* in the award and administration of federally assisted contracts. Failure by the Contractor to comply with these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Department deems necessary.

Definitions

Commitment - The approved DBE participation submitted by the prime contractor during the bidding process.

Committed DBE - Any DBE listed on the DBE commitment list approved by the Department at the time of bid submission or any DBE utilized as a replacement for a DBE firm listed on the commitment list.

Department - North Carolina Department of Transportation

Municipality - The entity letting the contract, when this provision refers to the Department or DOT, it shall mean municipality, if applicable.

Disadvantaged Business Enterprise (DBE) – A firm certified as a Disadvantage Business Enterprise through the North Carolina Unified Certification Program.

Goal - The DBE participation specified herein

Letter of Intent – Written documentation of the bidder/offeree's commitment to use a DBE subcontractor and confirmation from the DBE that it is participating in the contract.

Manufacturer - A firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

Regular Dealer - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

Form RS-1-D - Form for subcontracts involving DBE subcontractors attesting to the agreed upon unit prices and extensions for the affected contract items.

North Carolina Unified Certification Program - A program that provides comprehensive information to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with *49 CFR Part 26*.

Standard Specifications – The general term comprising all directions, provisions, and requirements contained or referred to in the *North Carolina Department of Transportation Standard Specifications for Roads and Structures* and any subsequent revisions or additions to such book that are issued under the title *Supplemental Specifications*.

USDOT - United States Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Contract Goal

The following goal for participation by Disadvantaged Business Enterprises is established for this contract:

Disadvantaged Business Enterprises (**number**) %

- (A) *If the goal is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that Disadvantaged Business Enterprises participate in at least the percent of the contract as set forth above as the goal.
- (B) *If the goal is zero*, the Contractor shall continue to recruit the DBEs and report the use of DBEs during the construction of the project. A good faith effort will not be required with a zero goal.

Contract Requirement

The approved DBE participation submitted by the Contractor shall be the **Contract Requirement**.

Certified Transportation Firms Directory

Real-time information about firms doing business with the Department and firms that are certified through North Carolina's Unified Certification Program is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the Department's homepage or by entering <http://apps.dot.state.nc.us/vendor/directory> in the address bar of your web browser. Only firms identified as DBE certified in the Directory can be utilized to meet the contract goals.

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm's capability to perform certain work.

Listing of DBE Subcontractors in Contract

Only those DBE firms with current certification are acceptable for listing in the bidder's submittal of DBE participation. The Contractor shall indicate the following required information:

- (A) *If the goal is more than zero* bidders, at the time the bid proposal is submitted, shall submit a listing of DBE participation on the appropriate form (or facsimile thereof) contained elsewhere in the contract documents in order for the bid to be considered responsive. Bidders shall indicate the total dollar value of the DBE participation for the contract. If the bidder has no DBE participation, they shall indicate this on the form "Listing of DBE Subcontractors" by entering the word or number zero. This form shall be completed in its entirety. **Blank forms will not be deemed to represent zero participation.** Bids submitted that do not have DBE participation indicated on the appropriate form will not be read publicly during the opening of bids. The Department will not consider these bids for award and the proposal will be returned to the bidder.
- (B) *If the goal is zero*, bidders at the time the bid proposal is submitted, shall enter the word "zero" or number "0" or if there is participation, add the value on the "Listing of DBE Subcontractors" (or facsimile thereof) contained elsewhere in the contract documents.

Written Documentation – Letter of Intent

The bidder shall submit written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal and written confirmation from each DBE, listed in the proposal, indicating their participation in the contract. This documentation shall be submitted on the Department's form titled "Letter of Intent to Perform as a Subcontractor". This letter of intent form is available at: <http://www.ncdot.org/doh/preconstruct/ps/contracts/letterofintent.pdf>. It shall be received in the office of the (Officer/Engineer) no later than (Time of Day) of the (No. of Days) calendar day following opening of bids.

If the bidder fails to submit the letter of intent from each committed DBE listed in the proposal indicating their participation in the contract, the DBE participation will not count toward meeting the goal.

Counting DBE Participation Toward Meeting DBE Goal of Zero or More

- (A)** If a firm is determined to be an eligible DBE firm, the total dollar value of the participation by the DBE will be counted toward the contract requirement. The total dollar value of participation by a certified DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the Contractor.
- (B)** When a DBE performs as a participant in a joint venture, the Contractor may count toward its DBE goal a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.
- (C)**
 - (1)** The Contractor may count toward its DBE requirement only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Town of Chapel Hill will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - (2)** A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract requirement. Work that a DBE subcontracts to a non-DBE firm does not count toward the contract requirement. If a DBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to rebut this presumption to the Town of Chapel Hill for commercially useful functions. The Town of Chapel Hill's decision on the rebuttal of this

presumption is subject to review by the Federal Highway Administration but is not administratively appealable to USDOT.

- (3) The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function.
- (a) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting DBE goals.
 - (b) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - (c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - (d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - (e) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.
 - (f) For purposes of this paragraph, a lease shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the DBE.
- (D)** A contractor may count toward its DBE requirement 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from DBE regular dealer and 100 percent of such expenditures to a DBE manufacturer.
- (E)** A contractor may count toward its DBE requirement the following expenditures to DBE firms that are not manufacturers or regular dealers:

- (1) The fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.
- (2) The fees or commissions charged for assistance in the procurement of the materials and supplies, or for transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are not from a manufacturer or regular dealer and provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Good Faith Effort for Projects with Goals More Than Zero

If the DBE participation submitted in the bid by the apparent lowest responsive bidder does not meet or exceed the DBE contract goal, the apparent lowest responsive bidder shall submit to the Department's Engineer documentation of its good faith efforts made to reach the contract goal. One complete set and 9 copies of this information shall be received in the office of the Department's Engineer no later than (Time of Day) of the (No. of Days) calendar day following opening of bids. Where the information submitted includes repetitious solicitation letters it will be acceptable to submit a representative letter along with a distribution list of the firms that were solicited. Documentation of DBE quotations shall be a part of the good faith effort submittal as necessary to demonstrate compliance with the factors listed below which the Town of Chapel Hill considers in judging good faith efforts. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

The following factors will be used to determine if the bidder has made adequate good faith effort:

- (A) Whether the bidder attended any pre-bid meetings that were scheduled by the Town of Chapel Hill to inform DBEs of subcontracting opportunities.
- (B) Whether the bidder provided solicitations through all reasonable and available means (e.g. advertising in newspapers owned and targeted to the Disadvantaged) at least 10 calendar days prior to bid opening). Whether the bidder provided written notice to all DBEs listed in the NCDOT Directory of Transportation Firms, within the Divisions and surrounding Divisions where the project is located, that specialize in the areas of work (as noted in the DBE Directory) that the bidder will be subletting.
- (C) Whether the bidder followed up initial solicitations of interests by contacting DBEs to determine with certainty whether they were interested. If a reasonable amount of DBEs within the targeted Divisions do not provide an intent to quote or no DBEs specialize in the subcontracted areas, the bidder shall notify DBEs outside of the

targeted Divisions that specialize in the subcontracted areas, and contact the Town of Chapel Hill to give notification of the bidder's inability to get DBE quotes.

- (D)** Whether the bidder selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise perform these work items with its own forces.
- (E)** Whether the bidder provided interested DBEs with adequate and timely information about the plans, specifications and requirements of the contract.
- (F)** Whether the bidder negotiated in good faith with interested DBEs without rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be noted in writing with a description as to why an agreement could not be reached.
- (G)** Whether quotations were received from interested DBE firms but rejected as unacceptable without sound reasons why the quotations were considered unacceptable. The fact that the DBE firms quotation for the work is not the lowest quotation received will not in itself be considered as a sound reason for rejecting the quotation as unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered as sound reason for rejecting a DBE quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy contract goals.
- (H)** Whether the bidder specifically negotiated with subcontractors to assume part of the responsibility to meet the contract DBE goal when the work to be sublet includes potential for DBE participation.
- (I)** Whether the bidder made any efforts and/or offered assistance to interested DBEs in obtaining the necessary equipment, supplies, materials, insurance, and/or bonding to satisfy the work requirements in the bid proposal.
- (J)** Any other evidence that the bidder submits which show that the bidder has made reasonable good faith efforts to meet the contract goal.

If a bidder is the apparent lowest responsive bidder on more than one project within the same letting located in the same geographic area of the state, as a part of the good faith effort the Town of Chapel Hill will consider allowing the bidder to combine the DBE participation as long as the DBE overall goal value of the combined projects is achieved.

If the Town of Chapel Hill does not award the contract to the apparent lowest responsive bidder, the Town of Chapel Hill reserves the right to award the contract to the next lowest responsive bidder that can satisfy the Town of Chapel Hill that the contract goal can be met or that adequate good faith efforts have been made to meet the goal.

DBE Replacement

The Contractor shall not terminate a committed DBE subcontractor for convenience or perform the work with its own forces or those of an affiliate. If the Contractor fails to demonstrate reasonable efforts to replace a committed DBE firm that does not perform as intended with another committed DBE firm or completes the work with its own forces without the Engineer's approval, the Contractor may be disqualified from further bidding for a period of up to 6 months.

The Contractor shall comply with the following for replacement of committed DBE.

(A) Performance Related Replacement

When a DBE is terminated or fails to complete its work on the contract for any reason, the Contractor shall take all necessary, reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work as the DBE that was terminated. The Contractor is encouraged to first attempt to find another DBE firm to do the same work as the DBE that was being terminated.

To demonstrate necessary, reasonable good faith efforts, the Contractor shall document the steps they have taken to replace any DBE subcontractor who is unable to perform successfully with another DBE subcontractor. Such documentation shall include but not be limited to the following:

- (1) Copies of written notification to DBEs that their interest is solicited in subcontracting the work defaulted by the previous DBE subcontractor or in subcontracting other items of work in the contract.
- (2) Efforts to negotiate with DBEs for specific subbids including, at a minimum:
 - (a) The names, addresses, and telephone numbers of DBEs who were contacted.
 - (b) A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.
- (3) For each DBE contacted but rejected as unqualified, the reasons for the Contractor's conclusion.
- (4) Efforts made to assist the DBEs contacted, if needed, in obtaining bonding or insurance required by the Contractor.

(B) Decertification Replacement

- (1) When a committed DBE is decertified by the Town of Chapel Hill after a Request for Subcontract has been received by the Town of Chapel Hill, the Town of Chapel Hill will not require the Prime Contractor to solicit replacement DBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract requirement.
- (2) When a committed DBE is decertified prior to the Town of Chapel Hill receiving a Request for Subcontract for the named DBE firm, the Prime Contractor shall take all necessary and reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work to meet the contract goal or demonstrate that it has made a good faith effort to do so.

Changes in the Work

When the Engineer makes changes that result in the reduction or elimination of work to be performed by a committed DBE, the Contractor will not be required to seek additional participation. When the Engineer makes changes that result in additional work to be performed by a DBE based upon the Contractor's commitment, the DBE shall participate in additional work to the same extent as the DBE participated in the original contract work.

When the Engineer makes changes that result in extra work, which has more than a minimal impact on the contract amount, the Contractor shall seek additional participation by DBEs unless otherwise approved by the Engineer.

When the Engineer makes changes that result in an alteration of plans or details of construction and a portion or all of work had been expected to be performed by a committed DBE, the Contractor shall seek participation by DBEs unless otherwise approved by the Engineer.

When the Contractor requests changes in the work that result in the reduction or elimination of work that the Contractor committed to be performed by a DBE, the Contractor shall seek additional participation by DBEs equal to the reduced DBE participation caused by the changes.

Reports

All requests for subcontracts involving DBE subcontractors shall be accompanied by a certification executed by both the Prime Contractor and the DBE subcontractor attesting to the agreed upon unit prices and extensions for the affected contract items. This information shall be submitted on the Department Form RS-1-D, located at:

<http://www.ncdot.org/doh/forms/files/FORMRS-1-D.doc> unless otherwise approved by the Town of Chapel Hill. The Town of Chapel Hill reserves the right to require copies of actual subcontract agreements involving DBE subcontractors.

Within 30 calendar days of entering into an agreement with a DBE for materials, supplies or services, not otherwise documented by a Request for Subcontract as specified above, the Contractor shall furnish the Engineer a copy of the agreement. The documentation should also indicate the percentage (60% or 100%) of expenditures claimed for DBE credit.

All certifications will be considered a part of the project records, and consequently will be subject to penalties under Federal Law associated with falsifications of records related to projects.

Reporting Disadvantaged Business Enterprise Participation

- (A)** The Contractor shall provide the Engineer with an accounting of payments made to Disadvantaged Business Enterprise firms, including material suppliers, contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the Engineer for any given month by the end of the following month. Failure to submit this information accordingly may result in the following action:
- (1) Withholding of money due in the next partial pay estimate; or
 - (2) Removal of an approved contractor from the prequalified bidders' list or the removal of other entities from the approved subcontractors list. (Municipality may add to, change or delete this section.)
- (B)** The Contractor shall report the accounting of payments on the Department's DBE Subcontractor Payment Information Form DBE-IS, which is available at: <http://www.ncdot.org/doh/forms/files/DBE-IS.xls>. This shall be reported to the (Officer/Engineer).
- (C)** Contractors reporting transportation services provided by non-DBE lessees shall evaluate the value of services provided during the month of the reporting period only.

Prior to payment of the final estimate, the Contractor shall furnish an accounting of total payment to each DBE. A responsible fiscal officer of the payee contractor, subcontractor, or second tier subcontractor who can attest to the date and amounts of the payments shall certify that the accounting is correct.

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to DBEs, it shall be the prime contractor's responsibility to report all monthly and final payment information in the correct reporting manner.

Because Federal Funding is being used to fund this project, failure on the part of the Contractor to submit the required information in the time frame specified may result in the

disqualification of that contractor and any affiliate companies from further bidding until the required information is submitted.

Because Federal Funding is being used to fund this project, failure on the part of any subcontractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from working on any Federal or State project until the required information is submitted.

Failure to Meet Contract Requirements

Failure to meet contract requirements in accordance with Article 102-16(J) of the *Standard Specifications* may be cause to disqualify the Contractor.

7. Subject to compliance by the Municipality with the provisions set forth in this Agreement, the Department shall participate in the costs of the project for actual costs not to exceed \$50,000.00. Project costs which exceed this amount shall be borne by the Municipality.

(A) The Municipality may bill the Department for costs as herein stated by submitting an invoice to the Department's 7th Division Engineer. Reimbursement to the Municipality shall be made in one payment of \$50,000.00 upon completion of the work and approval of the invoice by the 7th Division Engineer and the Department's Financial Management Division.

(B) Failure to complete project within one year of execution of the agreement will result in forfeiture of payment and subsequently terminate participation by the Department in the project.

(C) All invoices must be submitted within one (1) year of completion and acceptance of the project by the Department.

(D) In accordance with General Statutes of North Carolina, Section 159-34, the Municipality shall arrange for an independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

8. Upon completion of the plantings, the Municipality shall assume responsibility for all maintenance and replacement of the landscape materials for twelve (12) months. 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.

9. Any changes, revisions, or alterations to the landscaping shall require prior review and approval by the Department's 7th Division Engineer prior to the work being initiated.

10. The Municipality agrees to continually maintain all plantings in accordance with generally accepted horticultural practices. The Department shall have the right to periodically inspect the maintenance practices being utilized by the Municipality.

11. 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.

12. In the event 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 payment in full.

13. 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.

14. The Department shall not be responsible for any damage to the plantings, which may be done by third parties.

15. 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.

16. 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.

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

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, as evidenced by the attached certified copy of Resolution, Ordinance or Charter Provision, as the case may be.

L.S. ATTEST:

TOWN OF CHAPEL HILL

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

Remittance Address:
Town of Chapel Hill

DEPARTMENT OF TRANSPORTATION

BY: _____
STATE HIGHWAY ADMINISTRATOR

DATE: _____

APPROVED AS TO EXECUTION:

BY: _____
ASSISTANT ATTORNEY GENERAL

COPY OF A 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 Department and the Town of Chapel Hill have agreed to the installation of certain landscape plantings on US 15/501 (Fordham Boulevard) at SR 1796 (Christopher Drive) in Chapel Hill; and,

WHEREAS, the Department and the Town of Chapel Hill have agreed that the Town of Chapel Hill shall be responsible for the preparation of the landscape plans and specifications, providing and installing the plantings; and,

WHEREAS, the Department shall participate in the cost of the project up to a maximum total of \$50,000.00; and,

WHEREAS, the Town of Chapel Hill has agreed to assume responsibility for all maintenance and replacement plantings of the landscaped areas upon completion of the project for a twelve month period, at no expense to the Department.

NOW, THEREFORE, BE IT RESOLVED, Orange County, is hereby formally approved by the Town Council of the Town of Chapel Hill 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 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 _____ day of _____, 20__.

(SEAL)

CLERK
TOWN OF CHAPEL HILL
NORTH CAROLINA