

NORTH CAROLINA

TRANSPORTATION IMPROVEMENT PROJECT
-MUNICIPAL AGREEMENT

ORANGE COUNTY

DATE: 1/19/2010

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: U-3306

AND

WBS Elements: 34913.3.1

TOWN OF CHAPEL HILL

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 Town of Chapel Hill, 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-3306, in Orange 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 the roadway improvements from along SR 1733 (Weaver Dairy Road) from NC 86 to SR 1734 (Erwin Road) in Chapel Hill. At the request of the Municipality, additional work to be included within the scope of the project shall include sidewalk along both sides of the road for the entire project length except for the Cedar Falls Park area.

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 the Project. 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.

UTILITIES

5. It is understood that the municipally-owned water and sewer lines are owned by Orange Water and Sewer Authority, therefore a separate Utility Agreement will be prepared with Orange Water and Sewer Authority. The Municipality shall 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 AND MAINTENANCE

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.
7. 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.

8. Upon completion of the Project, the improvement(s) except for the sidewalk as mentioned in section 10 C shall be a part of the State Highway System and owned and maintained by the Department.

FUNDING

9. The Municipality shall participate in the Betterment costs of the Project as follows:
 - A. Upon completion of the work, the Municipality shall reimburse the Department forty percent (40%), of the actual cost, including administrative costs, of the work associated with the construction of the sidewalks. The Department shall participate in sixty percent (60%) of the cost of the sidewalks of the actual total project 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 \$302,684.00. The estimated cost to the Municipality is \$121,074.00. Both parties understand that this is an estimated cost and is subject to change.
 - B. Reimbursement to the Department shall be made in one final payment upon completion of the work and within sixty days of invoicing by the Department.
 - 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. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23.

ADDITIONAL PROVISIONS

10. 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 along both sides of the road for the entire project length except for the Cedar Falls Park area. Said work shall be performed in accordance with Departmental policies, procedures, standards and specifications, and the following provisions.
 - A. It is understood by both parties that all sidewalk work 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 needed right of way

and or construction easements for the construction of the sidewalks, 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.

- B. Upon completion of the work, the Municipality shall reimburse the Department in accordance with Provision #9 stated hereinabove.
- C. The Municipality, at no expense to the Department, shall assume all maintenance responsibilities for the sidewalks and release the Department from all liability relating to such maintenance.

- 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.

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.

ATTEST:

TOWN OF CHAPEL HILL

BY: _____

BY: _____

TYPED NAME: _____

TYPED NAME: _____

TITLE: TOWN CLERK

TITLE: ASSISTANT/DEPUTY TOWN MANAGER

DATE: _____

Approved by the Town Council of the Town of Chapel Hill as attested to by the signature of
 _____ Clerk of the Town Council on _____ (Date)

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

(SEAL)

 (FINANCE OFFICER)

APPROVED AS TO FORM:

Federal Tax Identification Number
56-6001199

Town of Chapel Hill

(TOWN ATTORNEY)

Remittance Address:

Town of Chapel Hill

405 Martin Luther King Jr. Blvd

Chapel Hill, NC 27514

 (PUBLIC WORKS DIRECTOR)

DEPARTMENT OF TRANSPORTATION

BY: _____

(STATE HIGHWAY ADMINISTRATOR)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: March 4, 2010