

NORTH CAROLINA  
ORANGE COUNTY

2/12/08

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

BICYCLE AGREEMENT

PROJECT: EL-4828

AND

TOWN OF CARRBORO

THIS AGREEMENT is made and entered into on the last date executed below, by and between the Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the Department, and the Town of Carrboro, a municipal corporation, hereinafter referred to as the Municipality;

WITNESSETH:

WHEREAS, the Municipality proposes to make certain construction improvements within the Municipality under Project EL-4828, Orange County; said agreement is to consist of the planning of approximately 9,000 feet (1.7-miles), greenway which will extend along Morgan Creek from Smith Level Road to University Lake which will link residential areas and recreational destinations in the Town of Carrboro; and,

WHEREAS, the Municipality has requested to use Surface Transportation Program Direct Attributable (STP-DA) Funds to perform the planning, engineering and design work for the entire project; and,

WHEREAS, the Transportation Advisory Council (TAC) has authorized the Durham-Chapel Hill-Carrboro (DCHC) Metropolitan Planning Organization (MPO) to approve the allocation of the Surface Transportation Program Direct Attributable (DA) Funds to be used in the planning, engineering and design work for the entire project; 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 (DA) Funds allocation on behalf of FHWA to the Municipality for the planning, engineering and design work for the entire project in accordance

with the project scope of work and in accordance with the provisions hereinafter set forth in this Agreement; and,

WHEREAS, the Municipality and the Department are authorized to enter into an agreement for such improvement under the provision of G.S. 136-18 (12), G.S. 136-41.3, and G.S. 136-66.1 and have agreed to assume certain responsibilities for said work as hereafter set out.

WHEREAS, the Board of Aldermen of the Municipality has approved the project in accordance with the plans and specifications to be prepared by the Municipality and has agreed to participate in certain costs thereof in the manner and to the extent as hereinafter set out and has further agreed to the establishment and maintenance of certain traffic operating controls as hereinafter set out.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. This work shall consist of a planning and environmental study and preliminary engineering for the construction of approximately 1.7 mile long, 10-foot wide asphalt and/or concrete multi-use path which will extend along Morgan Creek from Smith Level Road to University Lake; and include links (paved or unpaved) to residential areas and recreational destinations in the Town of Carrboro.

2. The Municipality, at no expense to the Department, shall be responsible for the preparation of the environmental and/or planning document, including any environmental permits, needed to construct the project and shall design and prepare plans, specifications, quantities and details for said project. The Municipality shall be responsible for the preparation of the environmental and/or planning document in accordance with National Environmental Policy Act of 1966. The Municipality shall be responsible for certifying, in writing, to the Department that all work was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications prior to any payment being made to the Municipality.

3. If the Municipality causes the professional engineering services required by this Agreement to be performed by contracting with a private engineering firm, it is agreed as follows:

A. The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.

B. The Municipality, when procuring architectural, professional and engineering services, must adhere to Title 23 of the Code of Federal Regulations, Part 172. The Municipality shall comply with the policies and standards for negotiated contracts as contained in the Federal-Aid Policy Guide, Part 172; said policies and standards being incorporated in this Agreement by reference (<http://www.fhwa.dot.gov/legsregs/legislat.html>)

C. The Municipality shall submit all professional services contract proposals to the Division of Bicycle and Pedestrian Transportation. The Division of Bicycle and Pedestrian Transportation shall be responsible for the review and approval of the professional services contract prior to execution by the Municipality. In the event that the professional services contract proposal (engineering) exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.

4. Funding for this project shall be provided as follows:

A. At the request of the Municipality, and authorization from the TAC of the Durham-Chapel Hill-Carrboro (DCHC) Metropolitan Planning Organization (MPO), the Department shall allocate for planning and environmental study, and preliminary engineering costs only an amount not to exceed \$40,000 from the Durham-Chapel Hill-Carrboro (DCHC) Metropolitan Planning Organization's (MPO) State Transportation Program Direct Attributable Funds allocation. The \$40,000 represents 80% of the \$50,000 estimated for the subject Project. The Municipality is responsible for providing the 20% (estimated at \$10,000) matching funds 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 Municipality 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 Division of Bicycle and Pedestrian Transportation for approval 90 days prior to completion of the Project.

(B) The Municipality shall be responsible for funding the 20% match for the Direct Attributable funds authorized, all costs which exceed \$50,000, and all costs not reimbursed by the Federal Highway Administration due to noncompliance by the Municipality. In the event any monies are due to the Department, said funds shall be submitted 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 and G.S. 105-241.1.

(C) Upon completion of the work, the Municipality may bill the Department for actual costs up to \$40,000, payable from the Durham-Chapel Hill-Carrboro (DCHC) MPO's Surface Transportation Program Direct Attributable Funds as herein stated by submitting an itemized invoice along with proper supporting documentation to the Division of Bicycle and Pedestrian Transportation. The designated representative of the Division of Bicycle and Pedestrian Transportation and the Department's Financial Management Division shall make reimbursement in one final payment upon approval of said invoice by the designated representative.

(D) The Municipality agrees that, if the Federal Highway Administration should not participate in certain costs because of noncompliance with Federal and/or State regulations by the Municipality, it will reimburse the Department for such costs. All costs not reimbursed to the Department by the Federal Highway Administration for noncompliance by the Municipality shall be borne by the Municipality.

(E) The Municipality shall be responsible for adhering to applicable administrative requirements of 49 CFR Part 18 and is currently available at;

([www.fhwa.dot.gov/legsregs/directives/fapg/cfr4918a.html](http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr4918a.html)). If the work is performed by Municipality force account, said invoices shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowability of costs set forth in Office of Management and Budget (OMB) Circular A-87 ([www.whitehouse.gov/omb/circulars/a087/toc.html](http://www.whitehouse.gov/omb/circulars/a087/toc.html)). Reimbursement shall be based on actual cost incurred with the exception of equipment owned by the Municipality. Reimbursement for rates of equipment owned by the Municipality cannot exceed the Department's rates in effect for the time period in which the work is performed. If the work is performed by a contractor, said invoices shall show the contract cost.

(F) In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" ([www.whitehouse.gov/omb/circulars/a133/a133.html](http://www.whitehouse.gov/omb/circulars/a133/a133.html)), dated June 27, 2003 and the Federal Single Audit Act Amendments of 1996, 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.

(G) The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs, which have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division. In the event funding is withdrawn by FHWA, project reimbursement shall be subject to the availability of any remaining federal funds.

(H) Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department and/or FHWA to terminate participation in the costs of the Project.

(I) All invoices must be submitted within one (1) year of completion and acceptance of the work by the Department and FHWA or said invoices will be considered ineligible items for payment.

(J) Any costs incurred by the Municipality prior to written notification by the Department of federal authorization to proceed with the work shall not be eligible for reimbursement.

5. The Department reserves the right to deduct monies from the Municipality's Powell Bill fund if monies paid to the Municipality from the project funds are determined by the Department and/or FHWA, either by audit and/or inspection of books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs, not to be in compliance with the terms of this agreement.

6. In the event any monies are due to the Department, said funds shall be submitted 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.

7. 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 (Powell Bill fund), until such time as the Department has received payment in full.

8. The Municipality shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of final payment under this Agreement, for inspection and audit by the Department's Financial Management Division.

9. 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.

10. The Municipality, and/or its agent, shall also comply with the following federal policy: Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26.

**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/offeror'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**

Disadvantaged Business Enterprises (DBE) goals will not be established for the scope of work identified in Provisions 1 of this agreement. For those items of work, the Municipality shall report the anticipated utilization of DBE's during the completion of this work as defined in the LISTING OF DBE SUBCONTRACTORS below.

Goals for participation by Disadvantaged Business Enterprises (DBE) shall be established for this contract and approved by NCDOT prior to advertising for construction bids. In accordance with Bicycle and Pedestrian Division guidelines, a Disadvantaged Business Enterprise special provision will be submitted along with the funding authorization for the construction phase of the project.

The Firm shall exercise all necessary and reasonable steps to ensure that Disadvantaged Business Enterprises participate up to the level submitted in the firms Letter of Interest (LOI) or project proposal.

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

Disadvantaged Business Enterprises % - A goal for participation by Disadvantaged Business Enterprises will be established for this contract and approved by the State Contractor Utilization Engineer, or his designee, prior to advertising for construction bids.

**(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 Bicycle and Pedestrian Division no later than close of business of the tenth 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 Municipality 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 Municipality for commercially useful functions. The Municipality'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 Bicycle and Pedestrian Division 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 Bicycle and Pedestrian Division no later than close of business of the tenth 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 Municipality 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 Municipality 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 Municipality 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 Municipality 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 Municipality does not award the contract to the apparent lowest responsive bidder, the Municipality reserves the right to award the contract to the next lowest responsive bidder that can satisfy the Municipality 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 Department's Bicycle and Pedestrian Division 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 Municipality after a Request for Subcontract has been received by the Municipality, the Municipality 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 Municipality 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 Municipality. The Municipality 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.



11. The Municipality shall certify to the Department compliance with all applicable Federal environmental laws and regulations and ordinances and shall indemnify the Department against any fines, assessments or other penalties resulting from noncompliance by any entity performing work under contract with the Municipality.

12. The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this project. The Department shall not reimburse the Municipality for any expenses or obligations incurred for the project except those specifically eligible for the Durham-Chapel Hill-Carrboro (DCHC) MPO's Surface Transportation Program Direct Attributable Funds and obligations as approved by the Department under the terms of this Agreement.

13. The Municipality will indemnify and hold harmless the Department, FHWA and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claims for damage and/or liability in connection with any activities performed pursuant to this Agreement. The Department shall not be responsible for any damages or claims for damages, which may be initiated by third parties.

14. 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.

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:

TOWN OF CARRBORO

BY: Sarah C. Williams

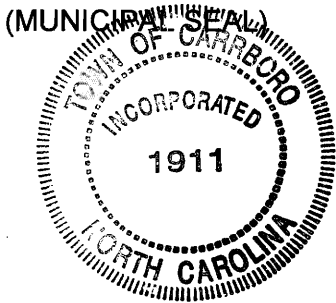
BY: Mark Clift

TITLE: Town Clerk

TITLE: Mayor

DATE: 3/4/08

DATE: 3/4/2008



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

L. Bingham Koenig  
Municipal Finance Officer

Federal Tax Identification Number

56-6001194  
TOWN OF CARRBORO

REMITTANCE ADDRESS:

Town of Carrboro  
301 W. Main St.  
Carrboro, NC 27510

#1513

DEPARTMENT OF TRANSPORTATION

BY: Susan L. Howard  
Deputy Secretary for Transportation

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 1/10/08  
(Date)

Board of Aldermen  
Approved by ~~Town Council~~ of the Town of Carrboro as attested to by the signature of Sarah C. Williams, Clerk of the ~~Town Council~~ on 2-19-08.  
Board of Aldermen (Date)