

NORTH CAROLINA  
ORANGE COUNTY

**LOCALLY ADMINISTERED PROJECT - FEDERAL  
SUPPLEMENTAL AGREEMENT**

DATE: 8/12/2010

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

AND

TOWN OF CARRBORO

TIP #: EL-4828

WBS Elements: PE 40245.1.1

ROW \_\_\_\_\_

CON 40245.3.1

OTHER FUNDING:

FEDERAL-AID NUMBER: STPDA-0702(14)

CFDA #: 20.205

Total Supplemental Funds [NCDOT Participation] \$480,000

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 Carrboro, hereinafter referred to as the "Municipality".

**WITNESSETH:**

WHEREAS, the Department and the Municipality, on 3/20/2008, entered into a certain Locally Administered Project Agreement for the planning 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 Department and the Municipality, on 10/30/2009, entered into a Supplemental Agreement to amend the scope of work and to increase the funding for the Project; and,

WHEREAS, the Department and the Municipality have mutually agreed to increase the funding to include construction phase and extend the completion date of the Project;

NOW, THEREFORE, this Agreement supplements the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

**1. SCOPE OF PROJECT**

The Project consists of the design of a multi-use pedestrian/bicycle path along Morgan Creek from Smith Level Rd west to the Weatherhill Pointe neighborhood and construction of a multi-use pedestrian/bicycle path along Morgan Creek from Smith Level Rd west to the Berryhill neighborhood, including a creek crossing. The scope of work also includes flood studies for four

creek crossings proposed to be included in the future full length of the greenway, which is proposed to extend from Smith Level Rd west to University Lake, with a connector trail to BPW Club Rd.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Preliminary Engineering
- Construction

as further set forth in this Agreement.

#### 4. FUNDING

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall participate in an additional amount up to a maximum amount of Four Hundred Eighty Thousand Dollars (\$480,000), as detailed below. The Municipality shall provide a local match, as detailed in the FUNDING TABLE below, and all costs that exceed the total estimated cost.

**FUNDING TABLE**

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
STP-DA	\$480,000	80 %	\$120,000	20 %
STP-DA (10/30/09)	\$4,000	80 %	\$1,000	20 %
STP-DA (3/20/08)	\$40,000	80 %	\$10,000	20 %
<b>Total Estimated Cost</b>			<b>\$655,000</b>	

#### 15. TIME FRAME

The Municipality, and/or its agent, shall complete pre-construction activities, to include Environmental Document, Right of Way Certification and final PS&E package, by November 30, 2011. The Municipality shall complete the Project by November 30, 2013.

The Municipality shall meet milestone dates as stated herein or the Department reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates. The

Department may extend the deadline for milestone activities if, in the opinion of the Department, circumstances warrant. Extensions of time granted will be documented in writing.

The Project must progress according to the milestone dates or the Department and/or FHWA reserves the right to de-obligate said funding.

## **16. CONSTRUCTION AUTHORIZATION**

The Municipality shall submit the required environmental and/or planning document, ROW certification, final construction plans, total contract proposal, and an estimate of Project costs (final PS&E package) to the Department for review and approval.

- After approval of all documentation, the Department will request construction authorization from the Federal Highway Administration.
- The Municipality shall not advertise for bids prior to receiving written construction authorization from the Department.

## **17. CONTRACTOR PROCUREMENT**

### **ADVERTISE FOR BIDS**

Upon receipt of written construction authorization from the Department, the Municipality may advertise the Project. The Municipality shall follow applicable Federal and/or State procedures pertaining to the advertisement of the Project, bid opening, and award of the contract, according to Title 49 of the Code of Federal Regulations, Part 18.36 and Title 23 of the Code of Federal Regulations, Part 633 and Part 635, incorporated by reference at [www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm); and NCGS, Chapter 143, Article 8 (Public Contracts), incorporated by reference at [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp).

### **CONSTRUCTION CONTRACTOR REQUIREMENTS**

All Contractors submitting bids on the project shall be pre-qualified by the Department. All proposed subcontractors must be pre-qualified before construction work begins. Any subcontractors who are proposed to meet the Disadvantaged Business Enterprise goal must be certified by the Department.

## **CONSTRUCTION SUBCONTRACTOR REQUIREMENTS**

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 of the Code of Federal Regulations, Part 26 and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference

[www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html](http://www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html).

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

## **AWARDING CONTRACT**

After the advertisement of the Project for construction bids, the Municipality shall request concurrence from the Department to award the construction contract by submitting a letter along with tabulated bids received depicting Disadvantaged Business Enterprises (DBE) goals, and a resolution recommending award of the Project to the lowest responsible, responsive bidder. The Department will review the submitted information and provide written approval to the Municipality prior to the contract being awarded by the Municipality.

## **DELAY IN PROCUREMENT**

In the event the Project has not been let to contract within six (6) months after receiving construction authorization from the Department, the Municipality shall be responsible for documenting to the Department justification for project delay and that the Project remains in compliance with the terms of this Agreement, the approved plans and specifications, and current codes.

## **FORCE ACCOUNT**

Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than a contract awarded by a competitive bidding process, or there is an emergency. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force

Account are contained in Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference [www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm](http://www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm). North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp).

## **18. CONSTRUCTION**

The Municipality, and/or its agents shall construct the Project in accordance with the plans and specifications of the Project as filed with, and approved by, the Department. During the construction of the Project, the procedures set out below shall be followed:

### **CONSTRUCTION CONTRACT ADMINISTRATION**

The Municipality shall comply with the NCDOT Construction Manual as referenced at <http://www.ncdot.org/doh/operations/dp%5Fchief%5Feng/constructionunit/formsmanuals/construction/>, which outlines the procedures for records and reports that must be adhered to in order to obtain uniformity of contract administration and documentation. This includes, but is not limited to, inspection reports, material test reports, materials certification, documentation of quantities, project diaries, and pay records. The Municipality, and/or its agent, shall perform the construction engineering, sampling and testing required during construction of the Project, in accordance with Departmental procedures, including the Department's Guide for Process Control and Acceptance Sampling and Testing. The Municipality shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

### **SIGNAGE**

The Municipality shall provide and maintain adequate signage and other warning devices for the protection of the public in accordance with the approved traffic control plans for the Project and the current edition of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

### **SITE LAYOUT**

The Municipality shall be responsible for ensuring that all site layout, construction work, and Project documentation are in compliance with applicable city, state and federal permits, guidelines, and regulations, including American Association of State Highway and Transportation

Officials (AASHTO) guidelines and Americans with Disabilities Act (ADA) Standards for Accessible Design ([www.usdoj.gov/crt/ada/stdspdf.htm](http://www.usdoj.gov/crt/ada/stdspdf.htm)).

### **RIGHT TO INSPECT**

The Department and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the work being performed by the Municipality or the Municipality's contractor to ensure compliance with the provisions of this Agreement. Prior to any payment by the Department, any deficiencies inconsistent with approved plans and specifications found during an inspection must be corrected.

### **CONTRACTOR COMPLIANCE**

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 Department or FHWA as a result of any review or inspection made by said representatives.

### **CHANGE ORDERS**

If any changes in the Project plans are necessary, the Department must approve such changes prior to the work being performed.

## **19. CLOSE-OUT**

Upon completion of the Project, the Municipality shall be responsible for the following:

### **FINAL INSPECTION**

The Municipality shall arrange for a final inspection by the Department. Any deficiencies determined during the final field inspection must be corrected prior to final payment being made by the Department to the Municipality. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The Municipality shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

## **FINAL PROJECT CERTIFICATION**

The Municipality will provide a certification to the Department that all work performed for this Project is in accordance with all applicable standards, guidelines, and regulations.

## **20. MAINTENANCE**

The Municipality, at no expense or liability to the Department, shall assume all maintenance responsibilities for the Morgan Creek Greenway, or as required by an executed encroachment agreement.

## **21. REIMBURSEMENT**

### **SCOPE OF REIMBURSEMENT**

Activities eligible for funding reimbursement for this Project shall include:

- Construction

### **REIMBURSEMENT GUIDANCE**

The Municipality shall adhere to applicable administrative requirements of Title 49 Code of Federal Regulations, Part 18 ([www.fhwa.dot.gov/legregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legregs/directives/fapgtoc.htm)) and Office of Management and Budget (OMB) Circulars A-102 ([www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html)) "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at [www.fhwa.dot.gov/legregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legregs/directives/fapgtoc.htm) and by Office of Management and Budget (OMB) Circular A-87 ([www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html)) "Cost Principles for State, Local, and Indian Tribal Governments." Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

### **REIMBURSEMENT LIMITS**

- **WORK PERFORMED BEFORE NOTIFICATION**

Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

- **NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING**

At no time shall the Department reimburse the Municipality costs that exceed the total federal funding.

- **UNSUBSTANTIATED COSTS**

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

- **WORK PERFORMED BY NCDOT**

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of \$480,000 available to the Municipality under this Agreement. If the cost of work done by the Department exceeds the funding award, the Department will bill the Municipality for the excess costs.

- **CONSTRUCTION ADMINISTRATION**

Reimbursement for construction contract administration will be made as governed by Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the Project. These costs will also include any cost overruns and charges to the Project by the Department during the Construction Phase.

- **CONSTRUCTION CONTRACT UNIT PRICES**

Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved change orders.

- **RIGHT OF WAY**

Reimbursement will be limited to the value as approved by the Department. Eligible costs for reimbursement of Right of Way Acquisition include: realty appraisals, surveys, closing costs, and the approved appraised fair market value of the property, at the reimbursement rate as shown in the FUNDING TABLE.



- **FORCE ACCOUNT**

Invoices for force account work shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for allowable costs set forth in Office of Management and Budget (OMB) Circular A-87 ([www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html)) "Cost Principles for State, Local, and Indian Tribal Governments." Reimbursement shall be based on actual eligible costs incurred with the exception of equipment owned by the Municipality or its Project partners. Reimbursement rates for equipment owned by the Municipality or its Project partners cannot exceed the Department's rates in effect for the time period in which the work is performed.

## **BILLING THE DEPARTMENT**

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

- **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

## **22. REPORTING REQUIREMENTS AND RECORDS RETENTION**

### **PROJECT EVALUATION REPORTS**

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures, that detail the progress achieved to date for the Project.

### **PROJECT RECORDS**

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project 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 and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

## **23. OTHER PROVISIONS**

### **REFERENCES**

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

### **INDEMNIFICATION OF DEPARTMENT**

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

## **DEBARMENT POLICY**

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies 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 Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

## **OTHER AGREEMENTS**

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for STP-DA funds and obligations as approved by the Department under the terms of this Agreement.

## **AVAILABILITY OF FUNDS**

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.

## **IMPROPER USE OF FUNDS, EXCESS USE OF FUNDS**

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, or if the cost of work done by the Department exceeds the funding award, the Department will bill the Municipality.

## **TERMINATION OF PROJECT**

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

## **AUDITS**

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 annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual 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.

#### **REIMBURSEMENT BY MUNICIPALITY**

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

#### **USE OF POWELL BILL FUNDS**

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

#### **GIFT BAN**

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

#### **24. SUNSET PROVISION**

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 expenditures 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 Municipality.

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 CARRBORO

BY: Catherine Wilson

BY: Al Stout

TITLE: Town Clerk

TITLE: Town Manager

DATE: 10/8/10

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by the Board of Aldermen of the Town of Carrboro as attested to by the signature of Catherine Wilson Clerk of the Town of Carrboro on 10/5/10 (Date)



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

[Signature]  
(FINANCE OFFICER)

Federal Tax Identification Number

566001194

Town of Carrboro

Remittance Address:

301 West Main Street

Carrboro, NC 27510

DEPARTMENT OF TRANSPORTATION

BY: [Signature]  
(STATE HIGHWAY ADMINISTRATOR)

DATE: 10/26/10

APPROVED BY BOARD OF TRANSPORTATION ITEM O: 8-5-10 (Date)