

**ORANGE COUNTY  
BOARD OF COMMISSIONERS**

**ACTION AGENDA ITEM ABSTRACT**

**Meeting Date:** June 16, 2009

**Action Agenda**

**Item No.** 4-KK

**SUBJECT:** Resolution Endorsing American Recovery and Reinvestment Act (ARRA) Grant Agreements with the North Carolina Department of Transportation

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**DEPARTMENT:** Planning and Inspections

**PUBLIC HEARING:** (Y/N)

No

**ATTACHMENT(S):**

1. ARRA Agreement & Resolution for Twin Creeks Park (Moniese Nomp) 10' Multiuse Greenway Trail

**INFORMATION CONTACT:**

Karen Lincoln, 245-2594  
Craig Benedict, 245-2592

**PURPOSE:** To consider accepting conditions set forth in the Agreement Resolutions with the North Carolina Department of Transportation (NCDOT) for two ARRA projects:

1. Twin Creeks Park (Moniese Nomp) Greenway (linear park): 10' multiuse asphalt trail including bridge over Jones Creek; and
2. Two (2) 28' light transit vehicles w/wheelchair lift: 1 replacement; 1 expansion for CMAQ Project C-4932 (service to start September 2009)

**BACKGROUND:** The American Recovery and Reinvestment Act (ARRA) of 2009 (i.e. economic stimulus legislation) announced on February 17, 2009 provides funding for transportation projects through the Surface Transportation Program (STP). Thirty percent (30%) of ARRA STP funds were distributed to urbanized areas through the STP Direct Attributable (DA) program.

The Durham-Chapel Hill-Carrboro (DCHC) Metropolitan Planning Organization (MPO) received \$7,889,430 in ARRA STPDA funds for locally managed projects. The ARRA projects are up to 100% reimbursable (ARRA funds do not require a local match). The DCHC Transportation Advisory Committee (TAC) approved allocating the funds to all local jurisdictions based on the 2000 Census population within the Metropolitan Area Boundary. (Counties usually do not receive STPDA funds because of the required local match which counties have traditionally had no means to raise, and because STPDA funding is based on population of only the urbanized area of the MPO.) DCHC MPO has approved Orange County's projects for the ARRA funds and has added those projects to the FY 2009-2015 Metropolitan Transportation Improvement Program (MTIP).

The following policies apply to ARRA projects:

- Davis Bacon Wage Laws
- National Environmental Protection Act (NEPA)

- Disadvantaged Business Enterprise (DBE)
- Buy America

There are specific reporting requirements states and MPOs must meet. If the state is unable to maintain a level of effort meeting these reporting requirements then the state will be prohibited from receiving the redistribution of unobligated funds in 2011. NCDOT has requested MPOs receiving ARRA STPDA funds to adhere to the schedule that states must use which requires 100% of funds to be obligated by October 1. Local jurisdictions must submit all pre-construction documents to NCDOT before September 1 to allow NCDOT sufficient time to review documents and receive construction authorization from the Federal Highway Administration before the October 1 deadline.

#### DCHC MPO Deadlines

The DCHC MPO will be closely monitoring and tracking the implementation of the STPDA funded projects and has endorsed a time frame to insure work on the projects will be carried out within the tight timeline for submitting all required documents to NCDOT before September 1. **The MPO's deadline for local approval of agreements for STPDA projects is July 1, 2009. If this deadline is not met, the TCC/TAC will consider replacing the STPDA projects with contingency projects.**

NCDOT has prepared the attached Project Agreement between NCDOT and Orange County for the Twin Creeks Park (Moniese Nomp) multi-use trail. The NCDOT Board of Transportation approved funding on June 4 for the two light transit vehicles for OPT. NCDOT's Transportation Improvement Program (TIP) Development Unit indicates NCDOT will have the agreement in approximately two weeks because the workload (from the ARRA projects) of the Program Consultant for Orange County's region has far exceeded that of the other transportation consultants. There is no "pre-construction" phase for the purchase of the two light transit vehicles so the Project Agreement will not be as detailed as the agreement for the Twins Creeks Park multi-use trail, as the transit vehicles will not require right-of-way certification, environmental documentation or plans, specifications and line item cost estimates needed for authorization to construct from NCDOT.

As noted above, Orange County must authorize the County Manager to sign the agreements and remit to NCDOT to be signed by the State Highway Administrator by July 1 to ensure MPO STPDA funding.

**FINANCIAL IMPACT:** There is no financial impact to Orange County provided the County submits all pre-construction documents to NCDOT before September 1, 2009. Coordination of this effort can be carried out by existing Planning staff.

**RECOMMENDATION(S):** The Manager recommends the Board:

1. Endorse the Resolution Accepting Conditions in the Project Agreement with NCDOT to construct a 10-foot asphalt multiuse trail through Twin Creeks Park (Moniese Nomp), and authorize the Interim County Manager to sign the agreement.
2. Authorize the Interim County Manager to sign the Project Agreement with NCDOT for the purchase of two (2) 28-foot light transit vehicles, subject to final review and approval by the County Attorney and others to ensure the County's policies and procedures adhere to federal requirements of the agreement.

NORTH CAROLINA  
ORANGE COUNTY

**LOCALLY ADMINISTERED PROJECT -  
FEDERAL**

DATE: 5/28/2009

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

AND

ORANGE COUNTY

TIP #: U-4726 GA

WBS Elements: PE \_\_\_\_\_

ROW \_\_\_\_\_

CON 36268.3.ST4

Federal Aid Project #: STM-000S(588)

CFDA #: 20.205

Total Funds [NCDOT Participation] \$429,457

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 Orange County, hereinafter referred to as the "County".

**WITNESSETH:**

WHEREAS, Section 1113 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA – LU), establishes ARRA funds, which require that federal funds be available for certain specified transportation activities; and,

WHEREAS, the Orange County has requested federal funding for Twin Creeks Park Greenway, hereinafter referred to as the Project, in Orange County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the County has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$429,457 for the Project; and,

WHEREAS, the Project will be financed with Federal funds from the American Recovery and Reinvestment Act of 2009 (ARRA), with reimbursement subject to the requirements as set forth in this Agreement under **ARRA Funding Requirements**; and,

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the County for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the Department has programmed funding in the approved Transportation Improvement Program for the Project; and,

WHEREAS, the governing board of the County has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; 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 (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning and construction of the Project approved by the Board of Transportation.

NOW, THEREFORE, the parties hereto shall execute this Agreement within ninety (90) days of receipt of this Agreement. In the event the County fails to execute said Agreement within ninety (90) days of receipt, the County shall be evaluated by the Department to determine whether forfeiture of funds is warranted.

This Agreement states 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. GENERAL PROVISIONS**

### **ARRA FUNDING REQUIREMENTS**

- The parties to this Agreement and associated contractors shall adhere to all applicable Federal and state requirements including, but not limited to, Competitive Procedures (Section 1554); Buy America (Section 1605); Davis-Bacon Prevailing Wage Rate (Section 1606); Authority of the U.S. Comptroller General (Section 902); and Authority of the Inspector General (Section 1515(a)) of the American Recovery and Reinvestment Act of 2009.
- The parties and/or the contractors shall post with the local Employment Security Commission Office all positions for which they intend to hire workers as a result of being awarded this funding and/or contract.
- All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by ARRA Legislation for this Project.
- Reporting documentation shall be submitted monthly prior to the Department processing invoices. Appropriate documents to meet the reporting requirements will be provided to all Parties.

- Construction authorization from the Federal Highway Administration must be received prior to **October 1, 2009**. To meet this deadline, all documentation should be submitted to the Department by **September 1, 2009**. Construction contracts must be awarded by **December 31, 2009**. In the event these deadlines are not met, the terms of this Agreement will be null and void and all funding will be rescinded.
- The Department will not process any invoices prior to construction authorization approval.

#### **AGREEMENT MODIFICATIONS**

Any modification to this Agreement will be agreed upon in writing by all parties prior to being implemented.

Any increases to the funding amount will be agreed upon by all parties by means of a Supplemental Agreement.

#### **SPONSOR TO PERFORM ALL WORK**

The County shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the County and/or its contractors and agents. The Department will provide technical oversight to guide the County. The Department must approve any assignment or transfer of the responsibilities of the County set forth in this Agreement to other parties or entities.

#### **COMPLIANCE WITH STATE/FEDERAL POLICY**

The County, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures.

#### **FAILURE TO COMPLY - CONSEQUENCES**

Failure on the part of the County to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

## 2. SCOPE OF PROJECT

The Project consists of constructing an approximately 0.62-mile 10-foot wide paved multi-use trail which connects Morris Grove Elementary School on Eubanks Road to the end of the County's property following the sewer easement along Jones Creek through Twin Creeks Park off the east side of Old NC 86.

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

- Construction

as further set forth in this Agreement.

## 3. FUNDING

Subject to compliance by the County with the provisions set forth in this Agreement and the availability of federal funds, the Department shall participate up to a maximum amount of Four Hundred Twenty Nine Thousand Four Hundred Fifty Seven Dollars (\$429,457), as detailed below. The County shall provide a local match, as detailed in the FUNDING TABLE below, and all costs that exceed the total estimated cost.

**FUNDING TABLE**

<b>Fund Source</b>	<b>Federal Funds Amount</b>	<b>Reimbursement Rate</b>	<b>Non-Federal Match \$</b>	<b>Non-Federal Match Rate</b>
ARRA	\$429,457	100 %	\$0	0 %
<b>Total Estimated Cost</b>		<b>\$429,457</b>		

## 4. USEFUL LIFE

The Useful Life of this Project is determined to be 20 years. Any leases or encroachments entered into by the County for this Project shall be for the length of the Useful Life. If the Project ceases to be used and designated as described in this Agreement, within the period of the Useful Life, the Department will require reimbursement for the amortized value of the Department's initial investment.

## 5. TIME FRAME

The County, and/or its agent, shall complete pre-construction activities, to include Environmental Document, Right of Way Certification and final PS&E package, within 3 months of execution of this Agreement or no later than September 1, 2009. The County shall complete the construction of the Project within 1 year 6 months of execution of this Agreement.

The County shall meet milestone dates as stated herein or the Department reserves the right to revoke the funds awarded if the County 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 in a satisfactory manner as determined by the Department or the Department and/or FHWA reserves the right to de-obligate said funding.

## 6. PRELIMINARY ENGINEERING AUTHORIZATION

If Preliminary Engineering, to develop pre-construction documents, is an eligible expense, then upon receipt of an executed agreement, the Department will authorize Preliminary Engineering funds and shall notify the County, in writing, once funds have been authorized and can be expended. The County shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

## 7. PROFESSIONAL AND ENGINEERING SERVICES

The County shall comply with the policies and procedures of this provision if Preliminary Engineering is an eligible expense.

### PROCUREMENT POLICY

When procuring professional services, the County must adhere to Title 49 Code of Federal Regulations Part 18.36; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at [www.fhwa.dot.gov/legregs/legislat.html](http://www.fhwa.dot.gov/legregs/legislat.html) and [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp).

- The County 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.
- If the Department is participating in the costs of professional services and the proposed contract exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.
- Reimbursement of construction administration costs cannot exceed fifteen percent (15%) of the total construction contract.

#### **SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS 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 Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation. 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 County 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 County fails to comply with these requirements, the Department will withhold funding until these requirements are met.

#### **WORK BY ENTITY**

If the Professional and Engineering Services required for this project will be undertaken by the County, and the County requests reimbursement, then the County must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the County.

### **8. PLANNING / ENVIRONMENTAL DOCUMENTATION**

The County shall prepare the environmental and/or planning document, including any environmental permits, needed to construct the Project, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations.

All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department for review and approval.

- The County shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including notices and applications required to apply for those permits necessary for the construction of the desired improvements. Copies of approved permits should be forwarded to the Department.
- The County shall advertise and conduct any required public hearings.
- If any permit issued requires that action be taken to mitigate impacts associated with the improvements, the County shall design and implement a mitigation plan. The Department will determine if any mitigation costs are eligible for reimbursement. The County shall bear all costs associated with penalties for violations and claims due to delays.
- The County shall be responsible for designing an erosion control plan if required by the North Carolina Sedimentation Pollution Control Act of 1973, NCGS 113A, Article 4, incorporated in this Agreement by reference at [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp) and obtaining those permits required thereby in order to construct the Project. During the construction of the improvements, the County, and its contractors and agents, shall be solely responsible for compliance with the provisions of said Act and the plan adopted in compliance therewith.

## 9. DESIGN

### CONTENT OF PLAN PACKAGE

The County, and/or its agent, shall prepare the Project's plans, specifications, and a professional estimate of costs (PS&E package), in accordance with the Department's guidelines and procedures, and applicable Federal and State standards. All work shall be submitted to the Department for review and approval. The plans shall be completed to show the design, site plans, landscaping, drainage, easements, and utility conflicts.

## 10. RIGHT OF WAY / UTILITY AUTHORIZATION

If the costs of right of way acquisition or utility relocation are an eligible expense, the County shall submit a letter of request to the Department to authorize and set up right of way and/or utility funding. The acquisition for right of way, construction easements, and/or utility relocation may be undertaken only after the County receives written authorization from the Department to proceed.

## **11. PROJECT LIMITS AND RIGHT OF WAY (ROW)**

### **SPONSOR PROVIDES ROW**

The County, at no liability whatsoever to the Department, shall be responsible for providing and/or acquiring any required ROW and/or easements for the Project.

### **ROW GUIDANCE**

The County shall accomplish all ROW activities, including acquisition and relocation, in accordance with the following: Title 23 of the Code of Federal Regulations, Part 710, Subpart B and Title 49 of the Code of Federal Regulations, Part 24, [Uniform Act] incorporated by reference at [www.fhwa.dot.gov/legregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legregs/directives/fapgtoc.htm); NCGS, Chapter 133, Article 2, Sections 133-5 through 133-18, Relocation Assistance, incorporated by reference at [www.ncleg.net/gascripts/Statutes/Statutes.asp](http://www.ncleg.net/gascripts/Statutes/Statutes.asp); and the North Carolina Department of Transportation Right of Way Manual.

### **APPRAISAL**

If the costs of ROW acquisition are an eligible expense, the County shall submit the appraisal to the Department's Right of Way Branch for review and approval in accordance with Departmental policies and procedures.

### **CLEARANCE OF PROJECT LIMITS / ROW**

The County shall remove and dispose of all obstructions and encroachments of any kind or character (including hazardous and contaminated materials) from said ROW, with the exception that the County shall secure an encroachment agreement for any utilities (which shall remain or are) to be installed within the ROW. The County shall indemnify and save harmless the Department, Federal Highway Administration, and the State of North Carolina, from any and all damages and claims for damages that might arise on account of said right of way acquisition, drainage, and construction easements for the construction of said Project. The County shall be solely responsible for any damages caused by the existence of said material now and at any time in the future and will save the Department harmless from any legal actions arising as a result of this contaminated and/or hazardous material and shall provide the Department with documentation proving the proper disposal of said material.

## **RELOCATION ASSISTANCE**

The County shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the Project in full accordance with the Federal relocation requirements of Title 49 Code of Federal Regulations, Part 24 [Uniform Act], as amended. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and Federal Highway Administration.

## **12. UTILITIES**

The County, and/or its agent, at no liability to the Department, shall relocate, adjust, relay, change or repair all utilities in conflict with the Project, regardless of ownership. All utility work shall be performed in a manner satisfactory to and in conformance with State and Federal rules and regulations, prior to County beginning construction of the project. The County shall submit a request, in writing, to all utility owners to relocate or adjust their facilities in accordance with the Right of Way Acquisition Policy contained in Title 23 of the Code of Federal Regulations, Part 710, Subpart B, incorporated by reference at [www.fhwa.dot.gov/legregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legregs/directives/fapgtoc.htm).

## **13. ENCROACHMENT AGREEMENT**

If any part of the Project is located on State Highway System right of way or property, the County shall secure an Encroachment Agreement with the Department prior to performing any work or improvements on that right of way or property.

## **14. RIGHT OF WAY CERTIFICATION**

The County, upon acquisition of all right of way/property necessary for the Project, shall provide the Right of Way Agent, located at the Department's Local Right of Way Office, all required documentation (deeds/leases/easement/plans) to secure right of way certification from that office. Certification is only issued after all ROW is in public ownership or property is publicly accessible by a legal document and utilities in conflict with the project are relocated.

## **15. CONSTRUCTION AUTHORIZATION**

The County 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 County shall not advertise for bids prior to receiving written construction authorization from the Department.

## **16. CONTRACTOR PROCUREMENT**

### **ADVERTISE FOR BIDS**

Upon receipt of written construction authorization from the Department, the County may advertise the Project. The County 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, Subpart A, and Part 635, Subpart A, incorporated by reference at [www.fhwa.dot.gov/legregs/directives/fapgtoc.htm](http://www.fhwa.dot.gov/legregs/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 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 County 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 County 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 County 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 County prior to the contract being awarded by the County.

#### **FORCE ACCOUNT**

Force Account work is not allowed on any project receiving ARRA funds.

### **17. CONSTRUCTION**

The County, 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 County 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.

#### **SIGNAGE**

The County 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 County 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)).

#### **CONSTRUCTION ENGINEERING, SAMPLING, TESTING**

The County, 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 County shall document that said compliance was accomplished in accordance with State and Federal procedures, guidelines, standards and specifications.

#### **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 County or the County'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 County 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.

### **18. CLOSE-OUT**

Upon completion of the construction phase of the Project, the County shall be responsible for the following:

## **FINAL INSPECTION**

The County 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 County. Additional inspection by other entities may be necessary in accordance with the Department's guidelines and procedures. The County shall provide the Department with written evidence of approval of completed project prior to requesting final reimbursement.

## **FINAL PROJECT CERTIFICATION**

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

## **19. MAINTENANCE**

The County, at no expense or liability to the Department, shall assume all maintenance responsibilities for the Twin Creeks Park Greenway, or as required by an executed encroachment agreement.

## **20. REIMBURSEMENT**

### **SCOPE OF REIMBURSEMENT**

Activities eligible for funding reimbursement for this Project shall include:

- Construction

### **REIMBURSEMENT GUIDANCE**

The County 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 County 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 County with all applicable federal policy and procedures.

#### **REIMBURSEMENT LIMITS**

- **WORK PERFORMED BEFORE NOTIFICATION**

Any costs incurred by the County 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 County costs that exceed the total federal funding.

- **UNSUBSTANTIATED COSTS**

The County 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 \$429,457 available to the County under this Agreement. If the cost of work done by the Department exceeds the funding award, the Department will bill the County 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.

- **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**

If costs of right of way acquisition are an eligible expense, 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.

## **BILLING THE DEPARTMENT**

- **PROCEDURE**

The County 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 County 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 County shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The County shall invoice the Department for work accomplished at least once every six (6) months to keep the Project funds active and available. If the County 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.

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

### **PROJECT EVALUATION REPORTS**

The County is responsible for submitting 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 County 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 County 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.

## **22. OTHER PROVISIONS**

### **REFERENCES**

It will be the responsibility of the County 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 County 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

County 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 County is solely responsible for all agreements, contracts, and work orders entered into or issued by the County for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for ARRA 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 County 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 County.

#### **TERMINATION OF PROJECT**

If the County decides to terminate the Project without the concurrence of the Department, the County 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 County shall arrange for an annual independent financial and compliance audit of its fiscal operations. The County 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 County's fiscal year ends.

#### **REIMBURSEMENT BY COUNTY**

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the County 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.

### **23. 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 County.

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 County by authority duly given.

ATTEST: ORANGE COUNTY  
BY: \_\_\_\_\_ BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

Approved by \_\_\_\_\_ of the Orange County as attested to by the signature of \_\_\_\_\_ Clerk of the \_\_\_\_\_ on \_\_\_\_\_ (Date)

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

(SEAL)

\_\_\_\_\_  
(FINANCE OFFICER)

Federal Tax Identification Number

\_\_\_\_\_  
Orange County

Remittance Address:

County of Orange

P. O. Box 8181

Hillsborough, NC 27278-8181

DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
(STATE HIGHWAY ADMINISTRATOR)

DATE: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: June 4, 2009