

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

**FUNDING AGREEMENT for  
CRABTREE WEST GREENWAY**

THIS AGREEMENT entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the COUNTY OF WAKE, a body politic and corporate of the State of North Carolina ("County") and the CITY OF RALEIGH, a North Carolina municipal corporation ("City") (together referred to as the "Parties").

**PRELIMINARY STATEMENT**

WHEREAS, the City has planned and is currently developing the Crabtree West Greenway Project, specifically the section extending from the current terminus at Lindsay Drive to the eastern boundary of Umstead State Park on Ebenezer Church Road. ("Greenway Project" or "Project"); and

WHEREAS, the County and the City recognize the mutual benefits to their citizens and the public at large in the development of the Project and the connecting of the communities within Wake County; and

WHEREAS, on March 15, 2021, the Wake County Board of Commissioners authorized a funding commitment to the City in the amount of \$2,800,000 to be paid out of the funding approved as part of the Open Space element of the Capital Improvement Fund Project Ordinance for FY 2021 and used for the Project subject to the terms and conditions herein; and

WHEREAS, the City will develop the Project and for this purpose has accepted the County's funding commitment in the amount of \$2,800,000 subject to the terms and conditions herein.

NOW THEREFORE, in consideration of the mutual promises, goals and objectives contained herein, and the mutual benefits resulting therefrom, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I  
SCOPE AND DESCRIPTION OF THE GREENWAY PROJECT

- A. The Greenway Project shall be located in Raleigh, Wake County, North Carolina. The purpose of the Project is to extend the Crabtree Creek Greenway from its current terminus at Lindsay Drive to the eastern boundary of Umstead State Park on Ebenezer Church Road. The Greenway Project shall cover approximately 1.8 miles of trail with a

12-foot-wide asphalt path as noted in the City's submittal for funding attached to this Agreement as Exhibit "A" and incorporated by reference.

- B. The Greenway Project includes the construction of the Project estimated to be completed on or about August 31, 2023 (the "Completion Date"). A schedule for the design/construction of the Greenway Project is attached to this Agreement as Exhibit "B" and incorporated by reference, with construction to commence thereafter.

## ARTICLE II CITY RESPONSIBILITIES AND COVENANTS

- A. The City is solely responsible for all Greenway Project costs, decisions, the procurement process, preparations of all plans and specifications, design, permitting and construction related to the Greenway Project as shown in Exhibit A, including those elements funded by the County.
- B. The City is responsible for funding the Greenway Project, including any overruns, new or additional costs arising during the Project. The anticipated sources of funding for the Greenway Project are set forth in Article V and Exhibit C.
- C. The City is responsible for acquiring all rights of way and easements needed for the Greenway Project. Costs for these acquisitions could include but are not limited to: direct purchase price; appraisal expenses; Phase 1 Environmental Assessment expenses; title investigation and title insurance secured through the City Attorney or outside counsel, as necessary and appropriate; recordation expenses.
- D. Acquisitions and easements acquired by the City will be in the name of the City of Raleigh and the City shall retain full ownership and/or interest in the acquisition of any property and/or easements necessary to construct the Greenway Project. To the best of the City's knowledge, there are no disputes concerning the location and/or boundaries of the easement interests associated with the Greenway Project, and the City shall be responsible for expenses associated with any disputes that may arise.
- E. The City shall be responsible for all phases of design, construction and construction management of the Greenway Project. The City shall provide to the County the 100% Final Construction Documents for the sole purpose of reviewing compliance with this Agreement prior to start of construction. The City shall not commence construction of the Greenway Project until all required approvals, acquisitions, easements, and financing have been obtained.

- F. The City acknowledges that the County will not reimburse the City for property acquired through condemnation proceedings; and that under current County policy, no costs associated with the acquisition of easements for the Project through condemnation proceedings can be paid using County open space bond funds.
- G. The City agrees to abide by any review, reporting, or other legal requirements established by state or local law, County resolution, open space bond requirements, or other agreement relating to the use of these funds.
- H. The City has determined that the renovations planned as part of the Greenway Project will not cause a negative impact on existing infrastructure such as roads or water and sewer facilities.
- I. The City acknowledges that any comments or suggestions provided by the County, except as otherwise provided by the Agreement, shall be given solely for the purposes of monitoring compliance with the terms of the Agreement, and shall not in any event be construed as a representative or directive regarding the Greenway Project decision.
- J. The County and the City agree that, following project completion and acceptance by the City, the Greenway Project shall be included as a component of the City's Greenway System. The Greenway Project will be owned and managed by, and shall be the responsibility of, the City, including future operation, maintenance, and repair. Nothing in this Agreement shall be construed to make the County responsible for any costs or obligation beyond the funding commitment up to \$2,800,000.
- K. The City shall install appropriate signage, upon completion of the Greenway Project, which shall include acknowledgement of the County's participation in the project. The City shall provide copies of proposed signage to the County Parks, Recreation, and Open Space Director prior to installation and shall not install signage until approved by the County to ensure proper content and usage of County logo, if applicable.
- L. To the extent permitted by law, the City agrees to defend, indemnify, and hold harmless the County, for all loss, liability, claims or expense (including reasonable attorney's fees) arising from bodily injury, including death or property damage, to any person or persons caused in whole or in part by the negligence or misconduct of the City, except to the extent same are caused by the negligence or willful misconduct of the County. It is the intent of this section to require the City to indemnify Wake County to the extent permitted under North Carolina law.

ARTICLE III  
COUNTY RESPONSIBILITIES AND COVENANTS

- A. The County is responsible for tendering a commitment of up to Two Million Eight Hundred Thousand and no/1.00s Dollars (\$2,800,000) to the City ("County Funding Commitment") to be paid out of the Open Space element of the Capital Improvement Fund Project Ordinance for FY 2021 and used exclusively for the Greenway Project subject to the terms and conditions herein and the approval of the Wake County Board of Commissioners.
- B. If requested by the City, the County agrees to provide additional documentation to evidence the County's Funding Commitment as outlined herein for the purpose of the City financing the Greenway Project. This includes, but is not limited to, providing a written affirmation of the County's contribution to the Greenway Project upon the terms and conditions of this Agreement. In no event shall the County be required to guarantee any commercial or private loan or provide any manner of commitment or financing beyond what is set forth in this Agreement.
- C. The County shall not fine or penalize City in any way, unless specifically permitted in this Agreement.

ARTICLE IV  
REPRESENTATIONS OF COUNTY AND CITY

The County and the City each represent, covenant, and warrant for the other's benefit as follows:

- A. Each party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and this Agreement has been properly authorized by the party's governing body. This Agreement is a valid and binding obligation of each party.
- B. The continuation of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the Wake County Board of Commissioners (BOC) and the Fuquay-Varina Board of Commissioners. If either governing body fails to appropriate sufficient monies to provide for the continuation of the Agreement, then it shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

- C. Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either is now a party or by which either is bound, or constitutes a default under any of the foregoing.
- D. To the knowledge of each party, there is no litigation or other court or administrative proceeding pending or threatened against such party (or against any other person) affecting such party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither such party's execution nor delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.
- E. No party has dealt with any real estate broker or brokerage firm regarding the transactions contemplated by this Agreement, and no person or firm has a claim for real estate commissions arising out of the acquisition or sale of the property upon which the Greenway Project shall be constructed.
- F. The County and the City agree that nothing in this Agreement shall be construed to mandate purchase of insurance by Wake County pursuant to N.C.G.S. 153A-435; or to be inconsistent with Wake County's "Resolution Regarding Limited Waiver of Sovereign Immunity" enacted October 6, 2003; or to in any other way waive Wake County's defense or the City's defense of sovereign or governmental immunity from any cause of action alleged or brought against either for any reason if otherwise available as a matter of law.
- G. The City and the County agree to cooperate to meet their mutual goals and objectives as set forth in this Agreement. The County Manager and the City Manager will allocate personnel to the purposes outlined in this Agreement to the extent required to complete the obligations of this Agreement.
- H. In consideration of the signing and with respect to the subject matter of this Agreement, the parties for themselves, their agents, officers, and employees, agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation, no matter how remote.

ARTICLE V  
CONDITIONS OF FUNDING

- A. The total estimated budget for the Greenway Project, including design, construction, contingency and inflation factors, is Eight million, Six Hundred Five Thousand, Three Hundred Forty-Eight Dollars and no/1.00s (\$8,605,348.00) as set forth in Exhibit C attached hereto. The anticipated sources of funding are as follows:

Wake County Funding Commitment	\$2,800,000
City of Raleigh	\$4,258,348
NCDOT	\$1,547,000
TOTAL	\$8,605,348

- B. The County Funding Commitment shall be delivered to City as follows:

1. Construction of the project is eligible for reimbursement up to one hundred percent (100%) of the County Funding Commitment.
2. Following commencement of construction, the City shall pay its general contractor each month, based upon Greenway Project work completed. The City shall, at agreed upon substantial milestones, but no more frequently than monthly, prepare and submit to the County a reimbursement invoice less than or equal to the City's payment of or construction costs for the Project up to the agreed upon funding amount . Invoices shall be paid to the City within 30 days of receipt by the County. Cover letter for the invoice must show the calculation of the requested Wake County reimbursement amount. The calculation should include what was paid by the City of Raleigh, as well as the NCDOT reimbursement amount.
3. A copy of the contractor's request for payment(s) and all supporting documentation shall be provided to the County with the invoice, including work contractor notes, design schedule, and evidence of full payment by the City of invoices submitted for reimbursement. The County in its discretion may withhold or delay funding in the event that all required approvals, acquisitions, easements, and financing have not been obtained by the City, supporting payment documentation is not provided, the work has not been completed, or the City deviates significantly from the construction documents in any manner that materially affects the Project without the written approval

of the County. The County Funding Commitment shall be tendered as a reimbursement for allowable expenses only, and not as an advance of funds.

- C. The County shall only provide the applicable funding when due and upon satisfaction of conditions as outlined in this Agreement. All requests for reimbursement by the City must be submitted no later than August 31, 2023. Any unused portion of the Funding Commitment expires after August 31, unless this deadline is extended in writing by the County.
- D. Any funds not paid by the County to the City under this Funding Agreement due to nonfulfillment of conditions or the expiration of the time to draw the County Funding Commitment shall remain in the Wake County Open Space element of the CIP until an alternate use for the funding is determined. The City shall not have any claim to such funding for any project or use other than the Greenway Project.
- E. The City represents that this Greenway Project shall not require the on-going support of the County's general operating funds. Nothing herein shall obligate the County to provide operating funds for the Greenway Project after completion.
- F. In consideration of the signing and with respect to the subject matter of this Agreement, the parties for themselves, their agents, officers, and employees, agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation, no matter how remote.

## ARTICLE VI INDEPENDENT CONTRACTOR

The parties acknowledge that the City is an independent contractor, and that nothing in this Agreement is intended, and nothing will be construed, to create any form of partnership or joint venture relationship between the City and the County, or to allow either to exercise control or direction over the other; notwithstanding that each party is bound by the terms and conditions of this Agreement. Neither party is an officer, agent, or employee of the other party for any purpose.

## ARTICLE VII TERMINATION OF GREENWAY PROJECT PRIOR TO COMPLETION

Should the Greenway Project or any Phase thereof become terminated prior to completion, the City shall remain the sole owner of the Greenway Project property, including

all land, structures, and equipment. The County shall have no further funding obligation and no ownership claim to any part of the Greenway Project unless expressly described in this Agreement.

The County's obligation to fund under this Agreement is specific to the parties and not transferrable to any subsequent owner or interest holder of the property upon which the Greenway Project or any phase of the Greenway Project is being constructed.

#### ARTICLE VIII NO THIRD-PARTY BENEFICIARIES

This Agreement is not intended to and shall not be interpreted to inure to the benefit of any third parties.

#### ARTICLE IX OFFICIAL CAPACITY

No officer, agent or employee of any party will be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section will not relieve any such officer, agent or employee from the performance of any official duty provided by law.

#### ARTICLE X MODIFICATION

This Agreement may only be modified in writing signed by both Parties; provided that any change in the scope of the Greenway Project resulting in a change in the amount of the payment obligation of the County hereunder shall require approval of the governing boards of each party.

#### ARTICLE XII ASSIGNMENT

The City shall not assign this Agreement, either in whole or in part, without the prior written approval of the County. The County shall not assign any of its duties under this



Agreement to any private or public agency, corporation, firm, or individual without the prior written approval of City.

ARTICLE XIII  
MISCELLANEOUS

- A. Notices. All notices or other communications hereunder to the City and the County shall be sufficiently given and shall be deemed to have been received five (5) Business Days after deposit in the United States mail in certified form, postage prepaid, to the County and the City, as the case may be, at the following addresses:

If to the County: Mr. Chris Snow, Wake County Parks Recreation and Open Space  
Director

Deliver to: 337 S. Salisbury Street, 10th Floor  
Mail to: PO Box 550  
Raleigh, North Carolina 27602  
Tel: (919) 856-6677  
E-mail: csnow@wakegov.com

If to City: Oscar Carmona, Raleigh Parks, Recreation and Cultural Resources  
Director

Deliver to: Raleigh Municipal Building, 6th Floor  
Mail to: 222 W. Hargett St., Ste. 608.  
Raleigh, North Carolina 27601  
Tel: (919) 996-3285  
E-mail: Oscar.Carmona@raleighnc.gov

- B. Severability. In the event any provision in this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- C. Execution. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- D. Applicable Law. This Agreement shall be governed by and be construed in accordance with the laws of the State of North Carolina. Jurisdiction for the resolution of any

conflict arising from this Funding Agreement shall lie with the General Court of Justice of the State of North Carolina with venue in Wake County, North Carolina.

- E. Headings. Paragraph or other headings contained in this Agreement are for reference purposes only and are not intended to affect in any way the meaning or interpretation of the Agreement.

IN WITNESS WHEREOF, the County has caused this Agreement to be executed in its name by its duly authorized officials and its corporate seal to be impressed hereon, and the City has caused this Agreement to be executed in its name by its duly authorized officials and its corporate seal to be impressed hereon, as of the Effective Date.

COUNTY OF WAKE, NORTH CAROLINA

\_\_\_\_\_  
David Ellis, Wake County Manager

ATTEST:

\_\_\_\_\_  
Yvonne C Gilyard  
Deputy Clerk to the Board of Commissioners

Approved as to form:

\_\_\_\_\_  
Scott W. Warren  
County Attorney

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

\_\_\_\_\_  
Finance Director

Frank Cope  
Community Services Director

CITY OF RALEIGH

ATTEST:

\_\_\_\_\_  
Marchell Adams-David  
City Manager

\_\_\_\_\_  
City Clerk

SEAL

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

\_\_\_\_\_  
Finance Director

Approved as to form:

\_\_\_\_\_  
City Attorney

## Exhibit A – Project Location & Graphical Description

WAKE COUNTY REQUEST FOR PROPOSALS GREENWAY

#20-001

January 16, 2020

(Attached at End)

## Exhibit B – Project Schedule

March 5, 2021	Advertise for Construction
April 2, 2021	Open Bids
May 18, 2021	Award Bid
June 2021	NCDOT Concurrence
July 2021	Signed Contract
August 2021	Notice to Proceed
August 2023	Construction Complete

## Exhibit C – Estimated Budget

Greenways Attachment 2 - Budget Worksheet						Updated Work-sheet - Addenda 2
Budget						
	City of Raleigh*	NCDOT**	Other Partner**	Other Partner**	Requested from Wake County	Total
Est. Construction Cost (Materials, Construction, Permits, and Fees)	\$2,800,000	\$1,547,000			\$2,296,000	\$6,643,000
Construction Engineering & Inspection Services (Construction Project Management, Materials Testing, and Inspections)	\$796,000	\$0			\$504,000	\$1,300,000
Contingency Costs	\$662,348					\$662,348
<b>Total Cost</b>	<b>\$4,258,348</b>	<b>\$1,547,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,800,000</b>	<b>\$8,605,348</b>
% of Project	49%	18%	0%	0%	33%	