

NORTH CAROLINA

CHATHAM COUNTY

**FIRST AMENDMENT TO 'INTERLOCAL AGREEMENT FOR THE
MAINTENANCE OF THE AMERICAN TOBACCO TRAIL AND
DEVELOPMENT OF PARK FACILITIES'**

This First Amendment (the "Amendment") to "Interlocal Agreement For the Maintenance of the American Tobacco Trail and Development of Park Facilities" ("the Interlocal Agreement") is made and entered into this 15 day of December 2014, by and between **COUNTY OF CHATHAM, NORTH CAROLINA**, a body politic and corporate of the State of North Carolina (the "County") and **TOWN OF CARY (the "Town")**.

RECITALS

- A. The County and the Town entered into the Interlocal Agreement the 30th of November, 2009.
- B. The term of the Interlocal Agreement was five (5) years ending November 30, 2014.
- C. The County and the Town desire to extend the term of the Interlocal Agreement for an additional period of five (5) years.

NOW, THEREFORE, in consideration of the mutual covenants and the conditions contained herein the Parties agree as follows:

1. Completed Obligations. The Town has successfully completed its obligations under paragraph 1 of Interlocal Agreement and the County has met its funding obligation under paragraph 4 of Interlocal Agreement.
2. Continuation of Maintenance. The Town shall, through independent contractors or with its own forces, continue to provide routine maintenance to the 4.67 mile segment of the ATT which runs from Scott King Road to E. Ferrell Road through Chatham County ("Chatham ATT segment"), in compliance with all applicable laws and regulations and to the same extent the ATT was maintained during the initial five (5) year term of the Agreement, and to the reasonable satisfaction of the County.
3. Compensation for Routine Maintenance. The County shall pay the Town the sum of \$15,000 per year for routine maintenance. The first such payment shall be made on or before December 1, 2014. Thereafter payment shall be made to Town on or before July 30th of 2015, 2016, 2017 and 2018.
4. Routine Maintenance. Routine maintenance shall mean daily maintenance performed

by Town or Town's contractor commensurate with the level of maintenance provided during the initial five (5) year term of the Interlocal Agreement. A copy of the 'Town of Cary Contractor Operational Standards and Specifications for American Tobacco Train Routine Maintenance' is attached as Attachment 1 to give a general idea of the type of maintenance that is routine maintenance. Town staff shall perform monthly inspections of the entire trail to ensure appropriate maintenance is being performed. Attachment 2, 'Grounds Inspection Form' illustrates the nature of such monthly inspections. In the event that such inspections reveal incomplete or unsatisfactory conditions on the Chatham ATT segment, Town shall take immediate action to correct. If during the monthly inspection performed by the Town, non-routine maintenance items or future non-routine maintenance items are discovered, Town shall notify County of such required non-routine maintenance as provided below.

5. Non-routine Maintenance/Emergency Repairs. All maintenance and repairs other than routine maintenance shall be 'non-routine maintenance.' Town shall be responsible for managing all non-routine maintenance and emergency repairs. Non routine maintenance that must be performed immediately to protect the public health and safety and maintain the safe use of the Chatham ATT segment shall be 'emergency repairs.' The Town shall be responsible for non-routine maintenance and emergency maintenance until June 30, 2015. Thereafter, the parties shall share equally the cost of all non-routine maintenance and emergency maintenance. Non-routine maintenance includes but is not limited to trail repaving, bridge repairs and structural repairs. Emergency repairs might include repaving and repairs that must be undertaken promptly to maintain the safe use of the Chatham ATT segment and repairs and maintenance that are necessitated due to significant storm damage.

The Town will inform the County by January 10th of each calendar year of non-routine maintenance that is expected to be needed the following fiscal year and the expected costs and expenses of such maintenance and repairs. This should allow County to budget for such items. If County has objection to any undertaking any item of non-routine maintenance the following fiscal year, County shall notify Town of the objection by February 10th_____.

Town shall notify County promptly after becoming aware of needed emergency repairs, identifying the nature of the repair and the estimated cost. . Unless the emergency repair requires immediate attention, County shall have thirty (30) days to object to such repairs. County shall pay for its share of such repairs within sixty (60) days of receipt of an invoice from the Town, unless County has timely objected and an alternative arrangement has been made with Town.

Trail amenities (i.e. mile markers, trail signage, trail markings, etc.) along Chatham ATT segment are neither routine nor non-routine maintenance and shall be coordinated by Town with County. Town shall pay for such amenities provided Town funding is available. No reimbursement from the County is authorized under this Amendment for trail amenities.

6. Term. This Amendment shall be effective December 1, 2014 and shall have a term of five (5) years. On or before January 1, 2019, the County and the Town agree to initiate discussions regarding possible future extension of Interlocal Agreement.

7. Termination. Paragraph 7 of Interlocal Agreement is amended to provide that, in



addition to termination of Interlocal Agreement upon the sale or transfer of the New Hope Church Road Trailhead Park by the Town, either party may terminate this Interlocal Agreement upon thirty (30) days written notice to the other party. If the Agreement is terminated after payment of the compensation due for any year under paragraph 3 of this Amendment, the Town shall refund to the County a pro rata portion of the compensation paid for that year of the term.

8. Interlocal Agreement to Remain in Full Force and Effect. Except as hereinabove amended the Interlocal Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the respective Parties caused this Amendment to be executed by their County or Town Manager, their corporate seals to be affixed and attested by their respective Clerks, all by the Resolution of their Board of Commissioners or Town Council, spread across their minutes, the day and year first above written..

BY: *James G. Crawford*
~~Walter Petty~~, Chair, Chatham Board of Commissioners
James G. Crawford

ATTEST:

BY: *Lindsay K. Ray*
Lindsay K. Ray
Clerk to the Board

TOWN OF CARY
BY: *Benjamin T. Shivar*
Benjamin T. Shivar, Town Manager

ATTEST:

BY: *Sherry L. Scoggins*
Sherry L. Scoggins, Town Clerk



Certificate of Town of Cary Finance Officer

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

Michelle Beak 11/21/14
Deputy Finance Officer Date



Handwritten signature or text, possibly "V. J. ..."

Large handwritten signature or name, possibly "Joseph L. ..."



Certificate of Town of Cary Finance Officer

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

Richard ...
Town Finance Officer

11/11/11
Date



Town of Cary Contractor Operational Standards and Specifications for American Tobacco Trail Routine Maintenance

A. General:

1. The contractor shall use good judgment in the fulfilling of these specifications:
 - a. When good judgment indicates, due to weather, site conditions or for other reasons, that specifications be waived or modified, the contractor is responsible to recognize, report, and discuss such with the Town.
 - b. The contractor is advised to pay particular attention to the performance of work so that unnecessary harm and danger are not caused to patrons, public property, and plants and trees including their root system.
2. The determinations of the Town shall be final and binding regarding any and all waivers or modifications of these specifications.
3. The Town retains the right to perform any and all work within the service locations that it finds to be necessary.
4. The contractor is advised and agrees to the following: It shall be the right of the Town to perform the following tasks provided its performance is not used as the basis for a claim that the contractor is not in compliance with the contract:
 - a. To perform all the aspects of the Basic Service mentioned in the General Requirements on an unlimited basis.
5.
 - a. The contractor is responsible to advise the Town of significant deviation from the weekly plan of work submitted per SECTION II, Part F.2.
 - b. The contractor shall consolidate service operations and complete any service applications begun in a location or section of a location before moving to another location or section.
6.
 - a. The Town retains the right to issue a "call back" to the contractor when inspection reveals a service has not been rendered in compliance with the contract.
 - b. The contractor shall respond to a call back within twenty-four hours by reporting to the service area and taking the appropriate measures to bring the area into compliance with the contract.
 - c. Call backs shall be performed at no cost to the Town.
7. The contractor shall conduct maintenance operations so as to offer the least possible obstruction to the public and to abutting property owners

B. General Clean up Which Includes Litter and Leaf Removal and Blowing of Debris

1. Service areas shall be within the mowing and weed control service areas as they are delimited by this contract. Service area shall be defined to also include all drives, parking areas or other hard-surfaced areas within the locations unless otherwise deleted.
2. The contractor shall be responsible to clean up and remove from the service areas all litter, leaves, limbs or other types of debris or yard waste that is typically encountered within those service areas, which includes all Greenway swales, ditches, drainage pipes,

- culverts, rip-rap areas or walls, and inlets.
3. One complete, general clean up activity shall be performed at minimum on a weekly basis or the time frame that is assigned for the specific site.
 - a. A cleanup may be also performed concurrently with each mowing activity.
 - b. The contractor shall remove significant accumulations of litter, leaves or debris prior to mowing.
 4. The contractor shall be able to provide additional clean up relevant to service area maintenance within 24 hours of a Town request.
 5. Contractor shall blow, sweep or similarly remove clippings and other debris from hard surfaces (which includes shelters, tennis, and basketball courts) within the service area concurrently with mowing and trimming operations.
 6. Fall leaf collection shall be held as a special application of general clean up.
 - a. Fall leaf season shall be the period of time from the beginning of the first full week in November through the end of the third full week in December.
 - b. During fall leaf season, the contractor shall collect fallen leaves, at minimum, on a weekly basis. No greater than eight days should elapse between collections.
 - c. If needed due to volume the contractor must coordinate with the Facilities Division Manager or assigned Town designee at least 48 hours before scheduling of leaf pickup at designated areas within service locations. Once deposited, the leaves become the responsibility of the Town.
 7. The contractor shall be responsible for the proper disposal of typical litter, debris, yard waste, with the exclusion of leaves collected during leaf season.
 8. All greenways will require a weekly visit to empty the trash receptacles and blow or remove debris from the greenway surface, and any devices listed in Section IV, Part B.2 throughout the year. All bags will be provided by the contractor.

C. Mowing

1. Service areas for Lots and Properties, Parks, Centers, Facilities, Fire Stations, and Water Towers shall be all areas of turf type grasses that existed and were being routinely mowed at the time of contract period commencement, with the exception that no athletic fields or the turf inside the Pinwheel at the Special Use Complex, are to be serviced under this contract. Greenway mowing service areas are 5 feet off each side of the greenway unless there is a engineered swale that is located outside the 5 feet service area, and in that case the service area needs to be extended to cut the typical 5 feet service area plus the front and back of the engineered swale.
2. The number of mowings will be once a week for 52 weeks.
 - a. The Town may request additional mowings for any reason. The contractor shall comply with such a request and mobilize within twenty-four hours.
 - b. Specified mowing height shall be and not to exceed the following:
 - Fescue or other cool season turf 2.5 to 3.5 inches
 - Bermuda or other warm season turf 1 to 2 inches
 - c. No greater than 33 percent of the turf height shall be removed during cutting cycles.
 - i. If contractor, without Town waiver, allows turf to exceed such height, the contractor shall conform to the 33 percent specifications.
 - ii. The contractor shall apply that specification such number of times as required to bring the turf into compliance with specified mowing heights.

- iii. The costs of any additional mowing required to comply with this specification shall not be charged to the Town unless the contractor obtained a waiver from the Town or was otherwise not responsible for the excess in turf height.
3. a. Mowing shall be performed using rotary type mowers designed for commercial use. Using tractor with mowing attachments is not acceptable.
- b. Small push type or walk behind mowers shall be used for areas where riding mowers cannot maneuver safely or would cause damage to plant beds or mulched areas.
- c. Mowers shall be equipped with guards in accordance with the Specifications for Power Mowers, American National Standards Institute (ANSI) B71.1. Such guards shall be in proper working order and position at all times when mowers are in operation.
4. a. Clippings within turf areas may remain in place unless they are excessive to the degree of looking unattractive or causing damage to the turf. Windrows are unacceptable.
- b. Mowing operations shall be performed so as to not discharge clippings into plant beds and onto patrons within the service area. It is also important not to allow clippings to enter a storm drain.
- c. Mowers shall not damage trees and other plants such as by rubbing or hitting trunks or buttress roots.
5. The utilization of plant growth regulators (PRGs) shall not be acceptable.
6. Storm water Detention Areas or BMP's as specified should not be entered or maintained for any reason

D. Trimming and Edging of Turf and/or Ground Cover

1. Service areas shall be all turf areas adjacent to curbing, walks, trees, plant beds or site amenities within the mowing service area that cannot be reasonably mowed.
2. The contractor shall be responsible to perform trimming and edging so as not to cause significant damage or degradation to site amenities including trees, plants, plant beds, mulch areas or recreational areas.
3. Trimming shall be performed concurrently with mowing operations so as to maintain a well-defined and attractive interface or turf and other site amenities.
4. Trimming height shall conform with the mowing height of adjacent turf that is within this service area.
5. Edging with a commercial grade mechanical edger shall be performed so as to provide an attractive and sharply defined interface of turf and all walks and curbing.
6. In areas such as Greenways or non-curbed walkways, the use of chemical edging can be used along the pavement edge to keep the walkway clean of encroaching turf or other ground cover.
7. The contractor shall comply with Town requests for the performance of additional edging by mobilizing within twenty-four hours of the request. Such additional service shall be provided on a per linear foot basis as priced in the bid proposal.

E. Basic Weed Control

1. Service areas shall be all plant beds, mulched areas, walks, parking areas, patios, playgrounds and any margins associated with these areas or turf areas.
2. The contractor shall be responsible to inspect and perform control on a basis sufficient

- to keep service areas weed-free.
3. Chemical or hand methods of weed control may be utilized. Hoeing or other cultivation is not acceptable due to the possibility of injury to desirable vegetation roots.
 4. a. Glyphosate is the common non-selective herbicide pre-approved by the Town.
b. The contractor may propose use of other pre and post herbicides, but this must be approved in writing by the Town before any application is made. Proposal shall include the submittal of the following:
 - a product label
 - a product MSDS
 - a written statement detailing purpose(s) for the application(s)
 - a written description detailing exactly what locations and areas of service within each location the application(s) will be made along with proposed dates for the applications.
 - c. The contractor will maintain a log of herbicide applications made by his employees. The log will note all application locations, weather, and dates of application. Entries into the log will be noted to the Town as part of the weekly service goal report referred to in SECTION II, Part F, Item 3.
 5. The contractor and his staff shall be responsible to address public or Town employee inquiries regarding hazardous chemicals being utilized by the Contractor. Inquiries shall be addressed in accordance with State and Federal "Right to Know" and "Hazard Communication" laws.
 6. Chemical treatment of grasses or weeds around the edges of riprap, storm drains, streams, ponds, swales, culverts, wetlands or any water is not allowed. If any chemical treatment of weeds within the riprap is needed, it must be approved aquatic herbicide, applied by a licensed aquatic applicator.

F. Limb Trimming

1. No walkways, sidewalks, or greenways shall be obstructed by plants, limbs, or shrubs.
2. The contractor will be responsible to make sure all greenways are clear of hanging and hazardous limbs in a clearance zone of 5 feet off of each side of the greenway and 10 feet high.
3. Tree branches shall be removed in such a manner so as to not cause damage to other parts of the tree or to other plants or property.
4. All trimming or pruning applications shall follow the ANSI A300 Pruning Standards.

Attachment 2

Grounds Inspection Form

Facility Name: _____ Date: _____ Work Order: _____

<u>Inspected</u>	<u>Grounds</u>	<u>Inspected</u>
<input type="checkbox"/>	<u>Plant Material</u> <i>(Watering, Disease/Insects, Fertilization, Damage, Pruning)</i>	<u>Fences</u> <i>(Fabric, Rails, Posts, Damage, Gates, Locks)</i>
<input type="checkbox"/>	<u>Trails</u> <i>(Surface, Bridges, Boardwalks)</i>	<u>Lights</u> <i>(Bollards, Landscape Lights, Sign Lights, Parking Lot Light)</i>
<input type="checkbox"/>	<u>Trees</u> <i>(Hazard Limbs, Pruning, Insect/Disease, Mowing Clearance, Staking/Guying)</i>	<u>Mulch</u> <i>(Depth, Condition, Weeds)</i>
<input type="checkbox"/>	<u>Amenities</u> <i>(Signs, Benches, Trashcans, Grills, Gates, Bike Racks)</i>	<u>Pavement</u> <i>(Parking Lots, Sidewalks, Trails)</i>
<input type="checkbox"/>	<u>Bridges / Boardwalks</u> <i>(Uneven Surfaces, Damage, Erosion, Hardware, Blockages)</i>	
<input type="checkbox"/>	<u>Contract Services</u> <i>(Mowing, Edging, Weeding)</i>	

<u>Comments</u>	<u>Corrective Work Order Number</u>

Person performing Inspection: _____

Signature: _____

Date: _____

**RESOLUTION RATIFYING FIRST AMENDMENT TO THE INTERLOCAL
AGREEMENT FOR THE MAINTENANCE OF THE
AMERICAN TOBACCO TRAIL AND DEVELOPMENT OF PARK FACILITIES**

WHEREAS, the American Tobacco Trail (ATT) is a 23-mile long regional, multi-modal commuter and recreational route that connects the people of Western Wake County, the Town of Cary and Eastern Chatham County to the City of Durham and the Research Triangle Park; and

WHEREAS, the design and construction of the American Tobacco Trail was a joint endeavor between the North Carolina Department of Transportation, Chatham County, Wake County, Durham County, City of Durham, and the Town of Cary; and

WHEREAS, the American Tobacco Trail has a regional impact to multi-modal transportation for both commuters and recreational enthusiasts

WHEREAS, the Town of Cary was awarded a SAFETE-LU grant by the North Carolina Department of Transportation to construct the 4.67 mile segment of the American Tobacco Trail located in Chatham County ("Chatham ATT Segment"); and

WHEREAS, the Interlocal Agreement for the Maintenance of the American Tobacco Trail and Maintenance of Park Facilities provide that the Town would maintain the Chatham ATT Segment for a five year period; and

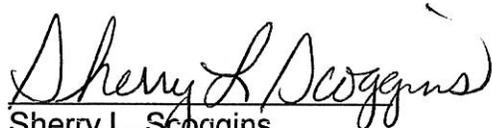
WHEREAS, the Town and Chatham County desire to extend the original Interlocal Agreement to July 30, 2019 and to provide additional provisions regarding maintenance.

NOW, THEREFORE, BE IT RESOLVED that the First Amendment to the Interlocal Agreement for the Maintenance of the American Tobacco Trail and Development of Park Facilities is hereby approved and ratified and the Town Manager or Deputy Manager is authorized and directed to execute said First Amendment in substantially the form attached to this Resolution.

Adopted this the 20th day of November 2014.


Harold Weinbrecht, Jr. Mayor

ATTEST


Sherry L. Scoggins,
Town Clerk



The above signature of Harold Weinbrecht, Jr., Mayor of the Town of Cary as attested by Town Clerk, Sherry L. Scoggins is for the First Amendment to the Interlocal Agreement for the Maintenance of the America Tobacco Trail and Development of Park Facilities dated November 20, 2014.