

AGREEMENT OVERVIEW

DATE: 9/21/2023

NORTH CAROLINA
ONSLOW COUNTY

PROJECT NUMBERS

PARTIES TO THE AGREEMENT:

WBS ELEMENT (PE): 3CR.PE

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

AND

TOWN OF NORTH TOPSAIL BEACH

The purpose of this Agreement is to identify the participation in project costs, project delivery and/or maintenance, by the other party to this Agreement, as further defined in this Agreement.

SCOPE OF THE PROJECT (“Project”): This Project consists of proposed bike lanes in North Topsail Beach. NCDOT will initiate, manage, and control the design, environmental survey, investigation, studies, and coordination to pursue a potential variance from the North Carolina Coastal Resources Commission, and environmental permit for proposed bike lanes.

ESTIMATED COST OF THE WORK: \$100,000

COSTS TO OTHER PARTY: \$100,000

PAYMENT TERMS: The Municipality shall provide payment by 12/31/2023.

EFFECTIVE DATES OF AGREEMENT:

START: Upon Full Execution of this Agreement

END: When work is complete and all terms are met.

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 North Topsail Beach, hereinafter referred to as the **Municipality**.

The parties to this Agreement, listed above, intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement, represents the entire understanding between the parties with respect to its subject matter and supersedes any previous communication or agreements that may exist.

I. WHEREAS STATEMENTS

WHEREAS, this Agreement is made under the authority granted to the **Department** by the North Carolina General Assembly under General Statutes of North Carolina (NCGS), particularly Chapter 136-66.1 and 136-66.3; and,

WHEREAS, the **Department** and the **Municipality** have agreed that the jurisdictional limits of the Parties, as of the date of entering the agreement for the above-mentioned project, are to be used in determining the duties, responsibilities, rights and legal obligations of the Parties hereto for the purposes of this Agreement; and,

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WHEREAS, the **Municipality** has requested that the **Department** perform all phases of said work or provide services; and,

WHEREAS, the Parties hereto wish to enter into an agreement for scoped work to be performed or provided by the **Department** (including reviews, goods or services) with reimbursement for the costs thereof by the **Municipality** as hereinafter set out; and,

NOW, THEREFORE, 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:

II. RESPONSIBILITIES

- The **Department** shall be responsible for all phases of project delivery to include planning and design as shown in the **PROJECT DELIVERY** Provision.
- The **Municipality** shall be responsible for payment as shown in the **COSTS AND FUNDING** Provision.

III. PROJECT DELIVERY REQUIREMENTS

A. PRELIMINARY ENGINEERING

The **Department** will prepare plans for the additional work requested by the Municipality. The **Department** will be responsible for entering into any contracts or agreements with professional engineering firms (PEFs) to perform said planning and design. All work shall be performed in accordance with the Department's policies, procedures, standards, and specifications, and the provisions of this Agreement.

B. CONSTRUCTION

The **Department** will be responsible for the construction of the Project. Any betterments or additional work, which has been requested by the **Municipality** to be incorporated or installed as part of the **Department's** construction contract will be addressed in a separate Agreement.

IV. COSTS AND FUNDING

A. REIMBURSEMENT TO THE DEPARTMENT

The Municipality shall be responsible for 100% of actual costs of the Preliminary Engineering design plans. The cost to the Municipality is \$100,000. It is understood by both the **Department** and the **Municipality** that this is an estimated cost for Preliminary Engineering unless the Municipality requests additional work not covered under this Agreement.

B. INVOICING BY THE DEPARTMENT

Upon completion of the Project, if actual costs exceed the amount of payment, the **Municipality** shall reimburse the **Department** any underpayment within sixty (60) days of invoicing by the **Department**. The **Department** will charge a late payment penalty and interest on any unpaid balance due in accordance with G. S. 147-86.23. If the actual cost of the preliminary engineering work is less than \$100,000 the **Department** will reimburse the **Municipality** any overpayment.

At any time prior to final billing by the **Department**, the **Municipality** may prepay any portion of the estimated cost by sending payment per the attached cover memo. The **Department** will provide a final billing based on the actual cost, less any previous payments that have been made.

V. STANDARD PROVISIONS

A. Agreement Modifications

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all parties by means of a written Supplemental Agreement.

B. Assignment of Responsibilities

The **Department** must approve any assignment or transfer of the responsibilities of the **Municipality** set forth in this Agreement to other parties or entities.

C. Agreement for Identified Parties Only

This Agreement is solely for the benefit of the identified parties to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

D. Other Agreements

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

E. Authorization to Execute

The parties hereby acknowledge that the individual executing this Agreement has read this Agreement, conferred with legal counsel, fully understands its contents, and is authorized to execute this Agreement and to bind the respective parties to the terms contained herein.

F. DocuSign

Department and **Municipality** acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the **Department** or the **Municipality**, to execute this Agreement. By selecting "I Agree," "I Accept," or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, **Department** and **Municipality** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes

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Department's signature as if actually signed by **Department** in writing or **Municipality's** signature as if actually signed by **Municipality** in writing. **Department** and **Municipality** also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. **Department** and **Municipality** acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

G. 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.

H. Indemnification

To the extent authorized by state and federal claims statutes, the **Municipality** shall be responsible for its actions under the terms of this agreement and save harmless the FHWA (if applicable), the **Department**, and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns to the extent allowed by law, from and against any and all claim for payment, damages and/or liabilities of any nature, asserted against the **Department** in connection with this Agreement. The **Department** shall not be liable and shall be held harmless from any and all third-party claims that might arise on account of the **Municipality's** negligence and/or responsibilities under the terms of this agreement.

I. 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.

J. 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, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

SIGNATURE PAGE

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IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, on the part of the DEPARTMENT and the MUNICIPALITY by authority duly given.

Town of North Topsail Beach

FED TAX ID NO: _____

Authorized Signer: _____

REMITTANCE ADDRESS:

Print Name: _____

Title: _____

Date Signed: _____

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Act:

Finance Officer: _____

Print Name: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION

BY: _____

TITLE: _____

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____(DATE)