

AGREEMENT OVERVIEW

NORTH CAROLINA
DARE COUNTY

DATE: November 12, 2024
PROJECTS NUMBERS:
WBS ELEMENTS: 362.49.4939

PARTIES TO THE AGREEMENT:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION ("Department")

AND

TOWN OF SOUTHERN SHORES ("Town")

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

SCOPE OF PROJECT ("Project"): Review of project plans and documents for Trinite Trail bridge in Southern Shores and ensure that all work is performed in accordance with the plans.

ESTIMATED COST TO TOWN: \$125,038
ESTIMATED COST OF THE PROJECT: \$1,667,178.70

PAYMENT TERMS: The Town of Southern Shores shall make a total of two (2) payments to the Department under this Agreement. The Town of Southern Shores shall submit the first payment to the Department in the amount of \$62,519 upon the execution of this Agreement. The second payment will be due upon the completion of the Project and shall be in an amount equal to the difference between the actual cost of all work performed by the Department and the amount of the first payment.

MAINTENANCE: Not Applicable

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 Southern Shores**, hereinafter referred to as the **Town**; and collectively referred to as the **Parties**.

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.

DRAFT

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 136-18(27); and,

WHEREAS, the **TOWN** has requested that the **Department** provide review of certain items related to transportation improvements that will either affect the State Highway System or will be eligible for funding in the future with Federal or State funding administered by the **Department**; and,

WHEREAS, the **Parties** hereto wish to enter into an agreement for scoped work to be performed or provided by the **Department** with reimbursement for the costs thereof by the **Town** as hereinafter set out.

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

- i. The **Town** will prepare plans or documents related to the construction of the Trinitie Trail bridge and shall submit to the Department for review and approval.

The Department shall be responsible for Construction Engineering and Inspection Services and Construction Materials Inspection. The work that will be completed includes, but is not limited to, the removal of the existing culvert bridge in Canvas Back Canal and replacement with a cored slab bridge located at the Juniper and Trinitie Trail intersection. The technical specifications for the project define the scope of the CEI Services.

- ii. The **Department** will review said plans and documents and ensure compliance with the same, and provide comments and/or approval back to the **Town**, as applicable.
- iii. The **Town** shall be responsible for payment as shown in the **COSTS AND FUNDING** Provision.

III. COSTS AND FUNDING

A. PROJECT COSTS

The **Town** shall reimburse the **Department** 7.5% of the actual cost of all work performed by the **Department**, including administrative costs. Based on the estimated cost of \$1,667,178.70, the **Town** shall submit payment for \$125,038 to the **Department's** Fiscal Section upon execution of this Agreement, per the attached "Remittance Guidance." Both **Parties** understand that this is an estimated cost and is subject to change.

B. ADJUSTMENT OF FUNDING

Upon completion of the project, if actual costs exceed the amount of payment, the **Town** shall reimburse the **Department** any under payment 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 work is less than \$1,667,178.70, the **Department** will reimburse the **Town** any overpayment

IV. 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 **Town** 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 **Town** is solely responsible for all agreements, contracts, and work orders entered into or issued by the **Town** 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. TITLE VI

The other party to this Agreement shall comply with Title VI of the Civil Rights Act of 1964 (Title 49 CFR, Subtitle A, Part 21) and related nondiscrimination authorities. Title VI and related authorities prohibit discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

F. FACSIMILE

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the **Parties** agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

G. 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.

H. 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 **Town** 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.

I. INDEMNIFICATION

To the extent authorized by state and federal claims statutes, the **Town** 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 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 **Town's** negligence and/or responsibilities under the terms of this agreement.

J. 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.

K. DOCUSIGN

The **Department** and the **Town** acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the **Department** or **Town**, 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, the **Department** and the **Town** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes the **Department's** signature as if actually signed by the **Department** in writing or the **Town's** signature as if actually signed by the **Town** in writing.

The **Department** and the **Town** 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. The **Department** and the **Town** 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.

L. 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, Adult Corrections, 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

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

(DOCUSIGN ONLY)

Authorized Signer: _____

Print Name: _____

Title: _____

Date Signed: _____

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

TOWN OF SOUTHERN SHORES

FED TAX ID NO: _____

REMITTANCE ADDRESS:

Finance Officer: _____

Print Name: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION

BY: _____

TITLE: _____

DATE: _____

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

SIGNATURE PAGE

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

(INK SIGNATURES ONLY)

ATTEST: _____ Authorized Signer: _____

BY: _____ Print Name: _____

TITLE: _____ Title: _____

Date Signed: _____

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

TOWN OF SOUTHERN SHORES

FED TAX ID NO: _____ Finance Officer: _____

REMITTANCE ADDRESS: _____ Print Name: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION (DocuSign)

BY: _____

TITLE: _____

DATE: _____

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