NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

AND

UNITED STATES DEPARTMENT OF THE ARMY, WILMINGTON DISTRICT, CORPS OF ENGINEERS, REGULATORY DIVISION

THIS AGREEMENT herein, 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 “NCDOT,” and the UNITED STATES DEPARTMENT OF THE ARMY, WILMINGTON DISTRICT, CORPS OF ENGINEERS, REGULATORY DIVISION hereinafter referred to as the “WILMINGTON DISTRICT, USACE,” referred to individually as “Party” or collectively as “Parties.”

W I T N E S S E T H:

WHEREAS, the NCDOT and the WILMINGTON DISTRICT, USACE in order to meet project permit conditions and to facilitate effective working relationships, entered into an Agreement, executed January 24, 2017 to maintain two (2) positions within the WILMINGTON DISTRICT, USACE; and,

WHEREAS, the NCDOT and the WILMINGTON DISTRICT, USACE amended the Agreement on May 9, 2018, to provide for funding for an additional four (4) partial-funded positions to accommodate the changing needs and requirements of the Parties; and,

WHEREAS, the NCDOT and the WILMINGTON DISTRICT, USACE desire to amend the Agreement to convert the four (4) partial funded positions into two (2) fully funded Project Manager positions and provide additional funding for one Regulatory Program Assistant (RPA) position to accommodate the changing needs and requirements of the Parties, subject to the conditions hereinafter set forth; and,

WHEREAS, the WILMINGTON DISTRICT, USACE has agreed to comply with the provisions and requests of the NCDOT to support said positions hereinafter set forth;

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, to fund and support a total of five (5) full-time positions within the WILMINGTON DISTRICT, USACE, as follows:

The following Provisions are hereby revised from the original agreement and the first supplemental as follows:

SCOPE

3. The WILMINGTON DISTRICT, USACE will provide up to four (4) Project Manager positions (fully funded) assigned on a full-time basis and one (1) Regulatory Program Assistant position (fully funded) assigned on a full-time basis to conduct the work specified under this Agreement, as agreed to by both Parties. Each position may be filled independently of the others.
5. Pursuant to this AGREEMENT, the said fully funded positions shall work exclusively on NCDOT projects and provide project review in accordance with ATTACHMENT A, Position Description Duties Summary, as attached hereto and incorporated in its entirety as if fully set out herein.

BUDGET STATEMENT AND FUNDING PROCEDURE

11. Subject to compliance by the WILMINGTON DISTRICT, USACE with the provisions set forth in this AGREEMENT, the NCDOT shall provide total funding in the amount not to exceed $3,875,567 to support up to four (4) Project Managers (fully funded) and one (1) Regulatory Program Assistant (RPA) position (fully funded) assigned on a full-time basis for the purposes outlined in this AGREEMENT and pursuant to the descriptions identified in Attachment A, previously attached and made part of this AGREEMENT. Funding shall be for up to a five (5) year period beginning October 1, 2016 or upon execution of this AGREEMENT and ending September 30, 2021, unless extended as included herein.

(A) Funds for each federal fiscal year will be payable in one lump sum forty-five (45) days in advance of the WILMINGTON DISTRICT, USACE incurring any financial obligations for the next annual funding year covered under this MOA. Payment will be made to the Finance and Accounting Officer, U.S. Army Corps of Engineers, Wilmington District.

(B) Payment shall be made in five (5) annual installments with the first payment not to exceed $304,126. The WILMINGTON DISTRICT, USACE shall submit an invoice in the form of a letter identifying the funding amount needed for the next Federal Fiscal Year. This invoice will be sent to the Program Administrator, NCDOT’s Transportation Program Management Unit Director. Payment shall be made upon approval of said invoice by the Program Administrator and the NCDOT’s Financial Management Division. The second (not to exceed $548,605), third (not to exceed $855,237), fourth (not to exceed $980,748), and fifth (not to exceed $1,004,059) installment payments shall be made at one (1) year intervals. The WILMINGTON DISTRICT, USACE will be responsible for submitting an invoice describing the actual funding amount required at least sixty (60) days prior to the payment date in order that said invoice can be approved by the Program Administrator and the NCDOT’s Financial Management Division, and payment can be made.

(C) Total funds of $3,875,567 as shown in Attachment B, Budget, attached hereto and incorporated in its entirety as if fully set out herein, shall be the maximum commitment during the life of this AGREEMENT unless a modification of this AGREEMENT is specifically authorized and executed in writing by both Parties.

(D) At the conclusion of this five-year AGREEMENT, any unexpended funds paid to the WILMINGTON DISTRICT, USACE during the duration of this AGREEMENT, shall be returned to NCDOT. The WILMINGTON DISTRICT, USACE shall have until January 31, 2022 to refund the excess funds to the NCDOT.

(E) The WILMINGTON DISTRICT, USACE is solely responsible for all agreements, contracts, and work orders entered into or issued by the WILMINGTON DISTRICT, USACE. The NCDOT shall not be held liable, by the WILMINGTON DISTRICT, USACE, for any expenses or obligations incurred for each position except those specifically eligible for the funds and obligations as approved by the NCDOT under the terms of this AGREEMENT.

(F) The WILMINGTON DISTRICT, USACE shall be responsible for maintaining appropriate records in accordance with federal accounting procedures and regulations for work conducted under this AGREEMENT and for a minimum of three (3) years from the date of final payment under this
AGREEMENT. These records shall be subject to examination or audit by NCDOT if they should so desire.

AGENCY CONTACTS

16. To provide for consistent and effective communication between the WILMINGTON DISTRICT, USACE and the NCDOT, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this AGREEMENT. The Principal Representative for this AGREEMENT will be as follows:

WILMINGTON DISTRICT, USACE
Monte Matthews
Lead Project Manager
3331 Heritage Trade Drive
Wake Forest, NC 27587
(919) 554-4884 x31

NCDOT
Timothy M. Little, PE
Chief Engineer
1 South Wilmington Street
Raleigh, North Carolina 27601
(919) 707-2500

APPENDICES

The following APPENDICES are modified and replaced and attached hereto and incorporated in its entirety as if fully set out herein with changes in **Bold**:

**APPENDIX A**

**APPENDIX B – BUDGET**

The following Provision is hereby removed from the agreement:

10.1 The WILMINGTON DISTRICT, USACE shall provide to the NCDOT a quarterly report of the activities and summary of expenditures for all partially funded positions during the quarter for this AGREEMENT. The said quarterly reports shall be provided 30 days after the end of the calendar quarter or on other dates as agreed to by the Parties. The said expenditure reports shall include the hours worked on NCDOT activities, burdened salary rates (benefits included) and hours spent, and shall be itemized for each position for each quarter and a total for the current Federal fiscal year.

The following Provision is hereby inserted and made part of the Agreement and is in **Bold**:

34. **This Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute a single instrument. This Agreement is the entire agreement between the parties regarding the subject matter hereof and may be modified or amended only by a writing signed by both parties. The terms of this Agreement which by their nature should survive expiration or termination of this Agreement shall so survive.**
IN WITNESS WHEREOF, this Supplemental Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the NCDOT and the WILMINGTON DISTRICT, USACE by authority duly given.

WITNESS:  

BY:  
TITLE: Assistant Division Chief Regulatory

UNITED STATES DEPARTMENT OF THE ARMY, WILMINGTON DISTRICT, CORPS OF ENGINEERS, REGULATORY DIVISION

BY:  
TITLE: Colonel U.S. Army District Commander

DATE: 25 NOV 19

"N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization."

Federal Tax Identification Number

Remittance Address:
United States Department of the Army
Wilmington District
Corps of Engineers
69 Darlington Avenue,
Wilmington, North Carolina 28403

NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BY:  
(CHIEF ENGINEER)

DATE: 12/18/2019

APPROVED BY THE NORTH CAROLINA BOARD OF TRANSPORTATION ITEM O: 10-3-19 (Date)
ATTACHMENT A

Position Description Duties Summary
Wilmington District, USACE

The Wilmington District, USACE, positions will accomplish the following tasks for NCDOT, as appropriate, to facilitate timely and productive response, evaluations, and decisions between the District, NCDOT, and the many stakeholders that participate in the review and processing of DA permits to move projects through the process. Expected responsibilities include but are not limited to the following:

Project Manager

- Providing evaluation and review of selected NCDOT jurisdictional determinations, project scoping, project specific mitigation, and permit applications leading to a subsequent decision on permitting.
- Facilitating field reviews on permitted construction activities and offering on-site advice for adherence to permit conditions.
- Providing technical review of mitigation site proposals and field site reviews.
- When necessary, implementing and participating in the current Merger process for proper project development and evaluation.
- Representing the District on various transportation improvement initiatives.
- Assisting in the development of programmatic agreements/consultation pursuant to the Clean Water Act to facilitate permit determinations.
- Reviewing transportation plans and programs.
- Being readily accessible to NCDOT staff to address issues. This would be an efficiency that would improve all aspects of both our programs. Addressing issues/problems sooner and potentially issue permits sooner.
- Perform other related tasks as defined by NCDOT and agreed to by the Wilmington District.

Position Description Duties Summary
Regulatory Project Assistant (RPA) – Fully Funded
Wilmington District, USACE

Currently, each Regulatory Field Office (FO) has one or two Regulatory Program Assistants (RPAs) that assist with various aspects of NCDOT projects. In total, that results in seven (7) different RPAs receiving, initially processing, and distribution all incoming project submissions to Corps Project Managers within their respective FO – both non-NCDOT and NCDOT related work. Inconsistencies between each FO can occur, and when coupled with the increasing NCDOT workload can result in delays for field site visits and permit decisions. A consolidation of this work to one (1) RPA, handling only NCDOT proposals would result in a more consistent and efficient permitting program for transportation proposals. The anticipated responsibilities include but are not limited to the following:

Regulatory Project Assistant (RPA) – Fully Funded
• Receiving all NCDOT Jurisdictional Determination requests, providing the tracking number/received date to the applicant, and distributing to the request to the correct Corps Project Manager (PM).

• Receiving all NCDOT electronic PCNs, completing the initial data entry, providing the tracking number/received date to the applicant, and distributing the application to the correct Corps Project Manager (PM). This includes any additional information and/or permit modifications received on previous applications.

• Receiving all NCDOT Individual Permit applications, providing the tracking number/received date to the applicant, and distributing the application to the correct Corps Project Manager (PM).

• Work with the appropriate PM for completion of all NCDOT Public Notices, to include distribution and posting.

• Work with the appropriate PM on all NCDOT related correspondence.

• Assist with all NCDOT Standard Permitting correspondence.

• Assist Corps NCDOT PMs with all CEFMS related issues to include (but not limited to) Travel Orders for NCDOT related travel, funding approvals for NCDOT related training, purchase approvals (PR&C) for items needed for NCDOT related work, and vehicle tracking and payment.

• Perform other related tasks as defined by NCDOT and agreed to by the Wilmington District.
ATTACHMENT B

BUDGET
Wilmington District, USACE

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<th>ANNUAL COSTS</th>
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**(ANNUAL)**

Total – Wilmington District, USACE (5-year period): **$3,692,775**

*Contingency (4.95%): **$182,792**

Grand Total (Cost and Contingency)(Agreement Maximum): **$3,875,567**

Notes:

1. Full-time, fully funded position’s estimated salary costs included are full burdened labor rates from USACE with anticipated salary escalation of 2.5% per fiscal year. Actual burdened labor rates will be billed.
2. Half year expected.
3. Estimated travel costs are based on expected normal allowance allowed per employee per year by the USACE. Actual travel costs will be billed.
4. Estimated vehicle lease costs include monthly lease, gasoline, oil changes, minor repairs, etc. Mileage estimate of 15,000 miles annually is based upon employees projected field review, site visits, attendance at monthly USACE/NCDOT meetings and required training. Actual vehicle costs will be billed.
5. Estimated office set-up costs include furniture, photocopier, computer, fax, printer, network connection, telephone, utilities, etc. Actual office set-up costs will be billed.
6. Estimated office operations costs which includes but is not limited to facsimile service, postage, telephone service (local, long distance, and cell), photocopier supplies, office supplies, field equipment, etc. Note that some operations costs may be supplied by both USACE and NCDOT funding. Actual operations costs to USACE will be billed.
7. A contingency is provided to cover normal actual business cost fluctuations and unanticipated operations.
costs during fiscal blackout periods for the life of the five (5) year AGREEMENT period. Unused contingency will be reverted by USACE to NCDOT upon completion of the AGREEMENT as included herein.

8 Partially-funded (50%) position’s estimated salary costs included are full burdened labor rates from USACE with anticipated salary escalation of 2.5% per fiscal year. Actual burdened labor rates will be billed.

9 Estimated salary costs included are full burdened labor rates from USACE with anticipated salary escalation of 2.5% per fiscal year. Actual burdened labor rates will be billed.

10 Actual training and travel will be billed.