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**SHARED SERVICES AGREEMENT
BETWEEN THE COUNTY OF GLOUCESTER AND
THE GLOUCESTER COUNTY IMPROVEMENT AUTHORITY
FOR PAULSBORO PORT SPINE ACCESS ROAD**

THIS SHARED SERVICES AGREEMENT ("Agreement") is entered into as of this 5th day of October, 2018, by and among the **GLOUCESTER COUNTY IMPROVEMENT AUTHORITY ("AUTHORITY")** a political subdivision of the State of New Jersey having its principal offices located at 109 Budd Boulevard, Woodbury, New Jersey 08096, the **COUNTY OF GLOUCESTER ("COUNTY")**, a political subdivision of the State of New Jersey having its principal offices located at 2 S. Broad Street, P.O. Box 337, Woodbury, New Jersey 08096.

W I T N E S S E T H:

WHEREAS, the County is a political subdivision of the State of New Jersey authorized to accept Transportation Funds and Grants, build roadways, capital improvements, enter into Shared Services Agreements with other public entities for such purposes in the promotion of economic development and the health, safety and welfare of its residents; and

WHEREAS, the Authority has been created pursuant to a resolution, duly and finally adopted by the governing body of the County, pursuant to the County Improvement Authorities Law, N.J.S.A. 40:37A-44, et seq. ("GCIA Act"); and

WHEREAS, the County and the State of New Jersey, acting by and through the Commissioner of Transportation (hereinafter "State"), recognized a need to effectuate certain traffic infrastructure improvements in the County including, but not limited to, the construction of the Paulsboro Port Spine Access Road, hereinafter referred to as the "Project"; and

WHEREAS, the County has agreed to cause the design and construction of the Project and the financing thereof; and

WHEREAS, the New Jersey Transportation Trust Fund Act, N.J.S.A. 27:18-1, et seq., authorizes the State to allocate transportation improvement funds to counties, pursuant to legislative appropriations, for certain traffic infrastructure projects, including the Project; and

WHEREAS, the County has applied for funding available through the New Jersey Department of Transportation (Transportation Funds) for the advancement of the Project, as such Project has been determined to be beneficial to the State's transportation system; and

WHEREAS, the Authority shall undertake the design, acquisition of right of ways, bidding, construction and construction management of the Project ("Authority Services") on behalf of the County, with the County to make payment to Authority for all NJDOT eligible design, construction, ROW, and construction management costs associated with this project.

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WHEREAS, the parties desire to set forth the terms upon which the Authority will provide the Authority Services to the County.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND THE MUTUAL COVENANTS AND REPRESENTATIONS CONTAINED HEREIN, AND INTENDING TO BE LEGALLY BOUND, THE PARTIES HERETO HEREBY MUTUALLY AGREE AS FOLLOWS:

1. CONSTRUCTION AND PAYMENT OBLIGATION

- a. County and Authority hereby agree that Authority shall design, acquire all necessary rights of way through negotiations and/or condemnation, bid, construct and manage construction of the Project more fully described in Exhibit A.
- b. Authority shall bill County, and County shall pay for all costs associated with the project and County shall be responsible for obtaining reimbursement from Transportation Funds.
- c. Authority and County agree to abide by all conditions of Transportation funding and Project Agreements with the NJDOT for the Project and all applicable state and/or federal bidding and procurement laws and regulations.

2. PROJECT COSTS

- a. All costs associated with the design, engineering, bidding, construction of the Project and Project management, including, but not limited to, costs of issuance incurred in connection with Project, property and rights of way acquisition costs, costs associated with environmental work and costs associated with field changes resulting from unforeseen field conditions or design errors or omissions.
- b. All costs associated with consultant agreements and construction contracts deemed by the Authority to be necessary to the accomplishment of the Project; and
- c. Costs of the Authority, attributable, as determined in accordance with Authority internal accounting procedures, solely to the Project; staff costs shall include the amount allocable to the Project (based upon accurate timekeeping records maintained on a current basis by Authority employees working on the Project) of actual salaries plus the cost of employee fringe benefits, leave time and indirect costs expressed as a percentage of salary costs in accordance with the County's formula for calculation of overhead costs.

3. **AGENCY RELATIONSHIP.** Neither the County nor the Authority intends this Shared Services Agreement to create any agency relationship other than that which may be specifically required by applicable law for the limited purpose of the Authority's performance of the obligations of the County pursuant to a Project Agreement with the NJDOT.

4. **INDEMNIFICATION OF COUNTY**

- a. During the term of this Shared Services Agreement, the Authority shall indemnify and shall hold the County, the members of the Board of Chosen Freeholders of the County ("Board") and its officers, agents and employees harmless against, and the Authority shall pay any and all liability, loss, cost, damage, claims, judgment or expense, of any and all kinds or nature, which shall be imposed by law, which the County, the members of the Board or its officers, agents and employees may sustain or may be subject to or may be caused to incur by reason of any claim, suit or action which is based upon personal injury, death, or damage to property, whether real, personal, or both, or upon or arising out of any contracts which have been entered into by the Authority in connection with the Project.
- b. The Authority, at its own cost and expense, shall defend any and all such claims, suits and actions which may be brought or asserted against the County, the members of the Board or its officers, agents or employees; provided, however, that this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance of its obligation to defend the County, the Authority and any other insured party which may be named in such policy or insurance in connection with any claims, suits or actions which are covered by the terms of such policy.
- c. The County and the Authority further agree as follows:
 - i. The County shall give an authorized official, officer agent or employee of the Authority ("Authorized Authority Representative") prompt written notice of any such claim and the institution of any suit or action, and the Authority shall give an authorized official, officer, agent or employee of the County ("Authorized County Representative") prompt written notice of the filing of any such claim and the institution of any suit or action;
 - ii. The County shall not, without the prior written consent of an Authorized Authority Representative, adjust, settle or compromise and such claim, suit or action with respect to the Project, and the Authority shall not, without the prior written consent of an Authorized County Representative, adjust, settle or compromise any such claim, suit or action with respect to the Project; and
 - iii. The County shall permit the Authority to assume full control for the adjustment, settlement, compromise or defense of any such claim, suit

or action, with prior written consent of an Authorized County Representative.

5. **INSURANCE**. At all times during the term of the construction of the Project, the Authority shall maintain or shall cause to be maintained with responsible insurers who are authorized to do business in the State of New Jersey, or in such other manner as may be required or permitted by law, casualty, all-risk and comprehensive general liability insurance with respect to the Project as the Authority shall determine to be reasonably required. The Authority shall be obligated to pay for the cost of such insurance for the Project. All such insurance policies shall name the Authority, as the primary beneficiary, and the County, as an additional insured.
6. **NO PERSONAL LIABILITY**. No covenant, condition or agreement contained in this Shared Services Agreement shall be deemed to be the covenant, condition or agreement of any past, present or future official, officer, agent or employee of the Authority or the County, in his or her individual capacity, and neither the officials, officers, agents or employees of the Authority or County, nor any official or officer executing this Shared Services Agreement shall be personally liable on this Shared Services Agreement by reason of the execution hereof by such person or arising out of any transaction or activity relating to this Shared Services Agreement.
7. **TERM**. The term of this Shared Services Agreement shall commence upon execution and shall terminate upon completion of the Paulsboro Port Spine Access Road Project.
8. **EVENTS OF DEFAULT: REMEDIES**
 - a. **Authority or County Event of Default**. The failure by the Authority or County to perform any term or condition of this Agreement which shall continue for more than forty-five (45) days after written notice of such failure has been sent by the other party or, if such failure is of a type that cannot be cured within forty-five (45) days, the failure of the Authority or County within such forty-five (45) day period to commence and diligently pursue such performance to completion shall be an Authority or County Event of Default.
 - b. **Remedies**. Whenever any Event of Default referred to in Section 8.a. hereof shall have occurred and shall be continuing, and provided that prior written notice of the Event of Default has been given to the defaulting party by the non-defaulting party and the Event of Default has not been cured (or attempts to cure, as provided in Section 8.a. hereto, have not been commenced), the non-defaulting party may, after satisfying the requirements of Section 8.c. below, take whatever action at law or in equity it deems necessary or

desirable to enforce the performance and observance of any obligation, agreement or covenant of the defaulting party under the terms of this Agreement.

- c. Alternative Dispute Resolution. Should any dispute arise between the parties concerning the interpretation or implementation of this Agreement, the parties shall first be required to submit their dispute to mediation. The parties shall mutually agree upon the services of a mediator, whose fees shall be borne equally by the parties.
- d. No Remedy Exclusive. No remedy which is conferred upon or which is reserved to the parties herein is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy which is provided under the terms of this Agreement or which is now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
- e. No Additional Waiver Implied by One Waiver. In the event that any agreement which is contained in this Agreement should be breached by either party and thereafter such breach shall be waived in writing by the other party, such waiver shall be limited to the particular breach so waived and shall not be a waiver of any other breach hereunder.

9. MISCELLANEOUS

- a. Authority to Contract. The Parties hereby represent to each other that each has the requisite power and authority to execute and deliver this Agreement, and to implement the Agreement and comply with the terms hereof.
- b. Binding Agreement. This Agreement shall be legal, valid and binding upon the Parties.
- c. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey.
- d. Notices. Any Notices shall be given in writing as follows:

If to the Authority:

Gloucester County Improvement Authority
Attn: George Strachan, Executive Director
109 Budd Boulevard
Woodbury, NJ 08096

If to the County:

County of Gloucester
Attn: Chad M. Bruner, County Administrator

2 South Broad Street
P.O. Box 337
Woodbury, NJ 08096

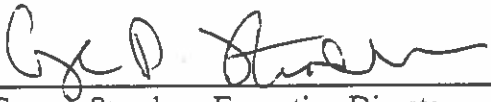
- e. Exculpation. It is expressly understood and agreed that nothing in this Agreement shall be construed to create any personal liability on the part of officers, officials, employees, agents or representatives of any Party. Such exculpation of personal liability shall be absolute and without any exception whatsoever.
- f. Further Assurances. Each of the Parties hereto agrees to execute such documents, to make such filings with regulatory authorities, and to otherwise provide such action as the other Parties may reasonably request in order to consummate the Activities and actions contemplated by this Agreement.
- g. Expenses. Each Party shall be responsible for its own expenses incurred in connection with the preparation of this Agreement.
- h. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be declared invalid or unenforceable by a Court of competent jurisdiction, the remainder of this Agreement, and the application of such term or provision to persons or circumstances other than to those to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
- i. Relationship of the Parties. It is expressly understood and agreed that the Authority and the County are parties to this Agreement but are not partners in any formal sense. Nothing contained in this Agreement shall be construed to mean that the Authority or the County are joint venturers, either expressly or by implication.
- j. Entire Agreement. This Agreement represents the entire Agreement between the Parties regarding the Paulsboro Port Spine Access Road Project, and all negotiations, oral agreements and understandings regarding activities for the Project are merged herein. Any Party may change the address to which Notices are to be sent by giving the other Parties and interested entities listed at Section 9.d. written notice of the new address in the manner provided in this section.
- k. Headings. The headings of the several Sections of this Agreement are inserted for convenience of reference only, and do not constitute a part of this Agreement.
- l. Waiver. Waiver of any covenant herein shall not be deemed a waiver of a breach of any other covenant.
- m. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
- n. Counterparts. This Agreement may be executed in counterparts, each of which will be considered one and the same Agreement.
- o. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto, and nothing herein, expressed or implied, shall give or be

construed to give to any person or entity, other than the Parties hereto, any legal or equitable rights hereunder.

- p. No Presumption Against Drafter. The Authority and the County hereby agree and acknowledge that this Agreement has been freely negotiated by the Parties. In the event of any ambiguity, dispute or disagreement over the interpretation, validity or enforceability of this Agreement or any of its covenants, terms or conditions, no inference, presumption or conclusion whatsoever shall be drawn against Authority by virtue of Authority's having drafted the initial draft of this Agreement.
- q. Police Powers and Termination Right. The Authority and the County shall retain the power and authority to terminate this Agreement for cause but agree not to unreasonably do so.
- r. Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the Parties to this Agreement.

WITNESS the execution hereof as an instrument under seal as of the date first above written.

GLOUCESTER COUNTY IMPROVEMENT AUTHORITY

By: 
George Strachan, Executive Director

Dated: 10/5/18

ATTEST:



Dated: 10-5-18

COUNTY OF GLOUCESTER

By: 
Robert M. Damminger, Director

Dated: 10-3-18

ATTEST:


Laurie J. Burns, Clerk of the Board

Dated: 10-3-18