

**STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER**

VISITOR CENTER IMPROVEMENT AGREEMENT

THIS VISITOR INFORMATION CENTER IMPROVEMENT AGREEMENT (hereinafter, "Agreement") is made and entered into the day fully executed by all parties, by and between the CITY OF WILMINGTON, a municipal corporation of the State of North Carolina (hereinafter, "City") and the NEW HANOVER COUNTY TOURISM AUTHORITY. (hereinafter, "Agency").

WITNESSETH:

WHEREAS, the City is authorized under §143B-434.2 of the North Carolina General Statutes to promote travel and tourism and seeks to cultivate hospitable travel and tourism in and around the City; and

WHEREAS, the Riverwalk Visitors Information Center, located at 2 Water Street in Wilmington, North Carolina is a public facility owned and maintained by the City of Wilmington; and

WHEREAS, the Riverwalk Visitors Information Center does not have central heat or air conditioning and cannot be open to the public during periods of extreme heat or cold weather; and

WHEREAS, the Riverwalk Visitors Information Center requires certain remodeling and repairs to accommodate installation of a heating and cooling system and properly maintain the structure; and

WHEREAS, the City and Agency desire to operate the Riverwalk Visitors Information Center on a year-round basis; and

WHEREAS, the City shall assure the public facilities meet the needs of the City and are constructed at a reasonable price; and

WHEREAS, the implementation of improvements will promote and enhance travel and tourism information for the City; and

WHEREAS, to expedite the completion of the improvements, the City and Agency would like to jointly participate in the proposed improvements of the Riverwalk Visitors Information Center (hereinafter, "the Project"); and

WHEREAS, the City and Agency desire to enter into this Agreement by which the City and Agency agree that the City shall manage and construct the Project and the Agency shall reimburse City for the costs of the Project in an amount not to exceed **Forty Two Thousand and Nine Hundred Dollars (\$42,900)**.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed upon by the parties, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

1. Scope of Project. The Project includes the design and construction of improvements to the Riverwalk Visitors Information Center as indicated on plans submitted by Go To Services NC, LLC, Fulford Heating and Cooling Inc., and Cape Fear Glass, Inc. (DBA Matkins Glass of Wilmington), attached hereto collectively and incorporated herein as Exhibit "A." It is anticipated that the Project will be completed within one (1) months of the execution of this Agreement. This one (1) month completion may be extended for an additional three (3) months by written mutual consent of the Parties. City shall provide a monthly report to the Agency to document the progress of the Project.

2. Invoicing and Payment of Project Costs. The City shall pay the costs related to the design and construction of the Project including, but not limited to, all permits, appraisals, court costs, design costs, and the cost of installation of the work, all construction and/or engineering supervision, testing and inspections associated with the construction, and all other costs incurred as a result of the construction of the Project (the "Project Construction Costs") up to and not to exceed Forty Two Thousand and Nine Hundred Dollars (\$42,900.00).

A. PAYMENTS

Payments will be made on a monthly, unit cost basis, upon receipt of detailed invoices and satisfactory review by the City. Go To Services NC, LLC, Fulford Heating and Cooling Inc., and Cape Fear Glass, Inc. (DBA Matkins Glass of Wilmington), shall send invoices to the City which shall be paid within thirty days (30) of receipt of a complete application for payment.

3. Reimbursement. Agency shall reimburse the City for all costs incurred by the City for the Project Construction Costs. City shall submit for reimbursement copies of all invoices received for Project Construction Costs and all receipts for payment made by the City for Project Construction Costs. Agency shall reimburse the City for the payments made by the City for Project Construction Costs within thirty (30) days of receipt of all documentation of costs incurred and payments made.

4. Term. This Agreement shall become effective upon the execution by the City and Agency and shall remain in effect through the completion of the Project. This Agreement shall terminate upon the earlier of (i) five (5) years from the date of execution, or (ii) at the completion of the Project.

5. Construction of Project. City shall perform project management functions related to permitting and construction of the Project.

6. Termination. This Agreement may be terminated by any of the parties in writing no less than thirty (30) days before construction begins.

7. Notice. Notices to the parties to this Agreement shall be sent by first-class or certified mail as required:

To Agency: New Hanover County Tourism Development Authority
Attn: Kim Hufham
929 N. Front Street, Suite 410
Wilmington, NC 28401

To City: Deputy City Manager or his Designee
Thom Moton
City of Wilmington
P.O. Box 1810
Wilmington, North Carolina 28402

Each party shall immediately notify the other of any change of address. Such notices shall be deemed to have been given when sent.

8. Amendment. This Agreement may be amended or modified, including any extension, upon mutual agreement of the parties if any such amendment shall be reduced to writing and signed by the parties.

9. Construction of Agreement. This Agreement shall be deemed to be made and performed in the State of North Carolina, and the parties hereto agree, notwithstanding the principles of conflicts of law, that the internal laws of the State of North Carolina shall govern and control the validity, interpretation, performance, and enforcement of this Agreement. Further, the parties hereto agree that any action relating to this Agreement shall be instituted and prosecuted only in the courts of the County of New Hanover, State of North Carolina, and each consents to the jurisdiction of said courts and waive any right or defense relating to such jurisdiction and venue. In the event of a conflict between the various terms and conditions contained herein, then the more particular shall prevail over the general and the more stringent or higher standard shall prevail over the less stringent or lower standard. This Agreement shall be considered to have been prepared equally by the parties hereto and shall not be construed more strictly against a party, regardless of which party was responsible for its preparation.

10. Assignment. This Agreement may not be assigned by any party without the prior written consent of the other party.

11. Binding on Successors and Assigns. All covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the City and Agency.

12. Non-Waiver of Rights. Any party's failure to insist upon the strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any rights under this Agreement.

13. Immunity Not Waived. This Agreement is governmental in nature and for the benefit of the public and is not intended to be for private profit or gain and the City does not intend to

waive governmental immunity by reason of this Agreement; provided, however, that the City acknowledges that by entering into this Agreement, governmental immunity shall not be a valid defense to a breach of contract claim brought hereunder.

14. Continuing Obligation. The parties will make and execute all further instruments and documents required to carry out the purposes and intent of this Agreement.

15. Reference. Use of the neuter includes feminine and masculine, singular includes plural; and captions and headings are inserted for convenience of reference and do not define, describe, extend or limit the scope or intent of this Agreement.

16. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties relating to the Project as described herein this Agreement and supersedes all prior discussions and written and oral agreements with respect thereto.

17. Savings Clause. If any section, subsection, paragraph, sentence, clause, phrase or portion of this is for any reason held invalid, unlawful, or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

18. Enforcement. It is recognized that the parties' remedies at law may not be adequate in the event of a breach of this Agreement. Accordingly, the parties agree that specific performance of this Agreement is a proper remedy in the event of a breach or default.

19. Multiple Counterparts. Multiple counterparts of this Agreement may be signed and delivered, each of which shall be considered an original and which together shall constitute but one Agreement.

20. Release and Indemnity. To the fullest extent permitted by Laws and Regulations, the Agency shall indemnify, hold harmless, and defend the City, its officers, directors, members, partners, employees, agents, contractors, and other consultants of each and any of them from and

against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising directly or indirectly out of the obligations herein undertaken or resulting from the operations conducted, provided that any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease, or death, or to injury to, damage, or destruction of tangible property, including the loss resulting therefrom. No party hereunder shall be liable for special or consequential damages, and each party waives its right to seek the same.

21. Relationship of the Parties. Each party acknowledges that the relationship with the others is that of an independent contractor with no employment relationship, joint venture, or partnership with the other parties with respect to the subject matter of this Agreement.

22. Other Laws and Regulations. The parties will comply with any and all applicable federal, state, and local standards, regulations, laws, statutes and ordinances including those regarding toxic, hazardous, and solid wastes and any pollutants; public and private nuisances; health or safety; and zoning, subdivision, or other land use controls. The parties will take all reasonably necessary, proper or required safety, preventative and remedial measures in accordance with any and all relations and directives from the North Carolina Department of Human Resources, the United States Environmental Protection Agency, the North Carolina Department of Environmental Quality, Health Departments, and any other federal, state or local agency having jurisdiction, to insure the prompt prevention or cessation (now or in the future) of violations of either the applicable provisions of such standards, regulations, laws, statutes, and ordinances or any permits or conditions issued thereunder. The undersigned certify that no party is listed on the Final Divestment List created by the N.C. State Treasurer pursuant to Chapter 147 (the Iran Divestment Act) of the North Carolina General Statutes. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147, the parties shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

23. Non-Discrimination. The parties will not discriminate against any employee or applicant for employment or otherwise illegally deny any person participation in or the benefits of the program which is the subject of this agreement because of race, creed, color, sex, age, disability,

or national origin. To the extent applicable, the parties will comply with all provisions of Executive Order No. 11246 the Civil Rights Act of 1964, (P.L. 88-352) and 1968 (P.L. 90-284), and all applicable federal, state, and local laws, ordinances, rules, regulations, orders, instructions, designations and other directives promulgated to prohibit discrimination. Violation of this provision, after notice and reasonable opportunity to cure, shall be a material breach of this agreement and may result, at City's option, in a termination or suspension of this agreement in whole or in part.

24. Liability of Officers and Agents. No officer, agent or employee of the City or of Agency shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.

25. Authority to Act. Each of the persons executing this Agreement on behalf of a party does hereby covenant, warrant and represent that such party is a duly organized and validly existing legal entity (where the party is represented to be an entity), that the party has full right and authority to enter into this Agreement, and that each and all persons signing on behalf of the party were authorized to do so.

IN WITNESS WHEREOF, the parties hereto, have caused the execution of this Agreement under seal and by authority duly given the day and year below written.

(SIGNATURES TO FOLLOW)

IN WITNESS WHEREOF, the CITY has caused this Agreement to be duly executed in its name and behalf and New Hanover County Tourism Authority has caused this Agreement to be duly executed in its name and behalf.

CITY OF WILMINGTON, NORTH CAROLINA

BY:

Anthony N. Caudle, City Manager

DATE: _____

WITNESS:

Daryle L. Parker, Purchasing Manager

APPROVED AS TO FORM:

Gina Essey, Assistant City Attorney

FINANCE OFFICER'S CERTIFICATION STATEMENT

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

This _____ day of _____, 2025.

Martha Wayne, Finance Director

Project String: 5GGMF25011-2INTERGOV-2OTGOVTS-NHCTDA


Org: 33902105 Obj: 302327 Project: 5GGMF25011

Amount: \$42,900.00

Requisition: N/A

Federal ID: 56-6000239

New Hanover County Tourism Development Authority

By: 
Name: Kim Hufham
Title: President / CEO

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

(name of person signing in blank)

Date: _____

Notary Public

Print Name: _____

[Official Seal]

My commission expires: _____

Reviewed By

Nicole L. Strickland, Purchasing Admin Spec -

Date:

Daryle L. Parker, Purchasing Manager -

Date: