AGREEMENT REGARDING

SOUTH FREDERICA TRANSPORTATION IMPROVEMENT DISTRICT

BETWEEN

DELAWARE DEPARTMENT OF TRANSPORTATION,

KENT COUNTY,

AND

TOWN OF FREDERICA

PROJECT MANAGER: SARAH COAKLEY, AICP, PRINCIPAL PLANNER, DELDOT

THIS AGREEMENT, made and entered into this 21st day of April 2021, by and between the Delaware Department of Transportation, as First Party, hereinafter referred to as the **DEPARTMENT**, Kent County, as Second Party, hereinafter referred to as the **COUNTY**, and Town of Frederica, as Third Party, hereinafter referred to as the **TOWN**.

WITNESSETH:

WHEREAS, the **DEPARTMENT**, the **COUNTY**, and the **TOWN** seek to establish a Transportation Improvement District, hereinafter referred to as the **TID**, in the South Frederica Master Plan area, for the purpose of securing required improvements to transportation facilities in the TID,

NOW, THEREFORE, for and in consideration of the mutual covenants, hereinafter stipulated to be kept and performed, it is agreed between the parties as follows:

SECTION 1. GEOGRAPHIC BOUNDARIES

A. The boundaries of the **TID** are shown on Exhibit A, attached hereto, and are described as follows:

1. Participant Boundary. Beginning in the north, where the eastern right-of-way line of Bay Road/SR1 intersects the northern parcel line of parcel 5-08-14100-01-0100-00001, the boundary follows the northern parcel line of parcel 5-08-14100-01-0100-00001 east to the parcel line of this parcel that divides this parcel just west of the perennial stream, then follows this parcel line south to the northern parcel line of parcel 5-00-14200-01-0100-00001, follows the northern parcel line of parcel 5-00-14200-01-0100-00001 northeast to the Palustrine Tidal Forested wetlands, then runs east and southeast along the western boundary of the

wetlands to the eastern parcel line of parcel 5-00-14200-01-2000-00001, follows the eastern parcel line of parcel 5-00-14200-01-2000-00001 southwest to the northern parcel line of parcel 5-00-14200-01-5500-00001, follows the northern and eastern parcel lines of parcel 5-00-14200-01-5500-00001 southeast and then southwest to Milford Neck Road, then runs west along Milford Neck Road to the eastern parcel line of parcel 5-00-15200-01-1800-00001, follows the eastern parcel line of parcel 5-00-15200-01-1800-00001 southeast to the northern parcel line of parcel 5-00-15200-01-2200-00001, follows the northern, eastern, and southern parcel lines of parcel 5-00-15200-01-2200-00001 to Bay Road/SR1, then crosses Bay Road/SR1, follows the southern parcel line of parcel 5-00-15100-01-2300-00001 west, the western parcel lines of parcels 5-00-15100-01-2300-00001 and 5-00-15100-01-2201-00001, and the southern parcel lines of parcels 5-00-15100-01-2000-00001 and 5-00-15100-01-1000-00001 to Tub Mill Pond Road, then runs south along Tub Mill Pond Road to the southern parcel line of parcel 5-00-14100-01-2400-00001, follows the southern, western, and northern parcel lines of parcel 5-00-14100-01-2400-00001 to the northern parcel line of parcel 5-00-15100-01-0800-00001, then follows the northern parcel line of parcel 5-00-15100-01-0800-00001 to the Milford Neck Road overhead bridge over Bay Road/SR1, then runs northeast along the Milford Neck Road overhead bridge over Bay Road/SR1 to the eastern right-of-way line of Bay Road/SR1, then runs along the eastern right-of-way line of Bay Road/SR1 north to the point of beginning.

2. Facilities Boundary. The following state-maintained road segments are included in the facilities boundary: Frederica Road from Market Street to the Milford Neck Road overhead bridge over Bay Road/SR1; Tub Mill Pond Road from the Milford Neck Road overhead bridge to Fork Landing Road; Milford Neck Road from Pritchett Road to the Milford Neck Road overhead bridge over Bay Road/SR1; the Milford Neck Road overhead bridge over Bay Road/SR1; Bay Road/SR1 from Spring Hill Drive to the Murderkill River; and the SR1 Exit 83 ramps.

B. The **TID** shall have both a Participant (inner) Boundary and a Facilities (outer) Boundary. The purpose of having two boundaries is to better provide for adequate infrastructure on all sides of developments inside the Participant Boundary. All land developments requiring a subdivision or land development plan, except as described in Section 6, within the Participant Boundary and all State-maintained capital transportation facilities (roads, bridges, sidewalks, bus stops, etc.) within the Facilities Boundary shall be subject to the terms of this agreement.

C. The boundaries of the **TID** may be amended at any time by mutual agreement of the parties in the form of a supplement to this **AGREEMENT**.

D. When updating their Comprehensive Plans, the **COUNTY** and the **TOWN** shall evaluate the need to amend the boundaries of the **TID**.

SECTION 2. TARGET HORIZON YEAR

A. The Target Horizon Year for which land use was forecast in creating the **TID** is 2045.

B. The Target Horizon Year may be amended at any time by mutual agreement of the parties in the form of a supplement to this **AGREEMENT**.

C. When updating their Comprehensive Plans, the **COUNTY** and the **TOWN** shall evaluate the need to amend the Target Horizon Year of the **TID**.

SECTION 3. SERVICE STANDARDS

A. The parties hereby agree to work together to develop a set of standards (Service Standards) for conditions in the TID in the Target Horizon Year, which the parties hereto shall, upon review and approval, adopt as an Appendix to this Agreement.

B. Prior to incorporating Service Standards into this **AGREEMENT**, the parties agree to solicit public comment on proposed standards and consider the comments received.

C. The Service Standards may be amended at any time by mutual agreement of the parties in the form of a supplement to this **AGREEMENT**, provided that the public is first afforded an opportunity to review and comment on the proposed amendment.

D. When updating their Comprehensive Plans, the **COUNTY** and the **TOWN** shall evaluate the need to amend the Service Standards of the **TID**.

SECTION 4. LAND USE AND TRANSPORTATION PLAN

A. The parties agree to work together to create a Land Use and Transportation Plan, hereinafter referred to as an **LUTP** for the **TID.**

B. The **COUNTY** and the **TOWN** have supplied to the **DEPARTMENT** a parcel-level land use forecast for the **TID** area, shown on Exhibit B, attached hereto.

C. The **DEPARTMENT** has inventoried roadway capacity and Level of Service conditions for the existing transportation network, forecast traffic on the study area road network for the Target Horizon Year, and has identified in concept preliminary transportation improvements necessary to maintain a LOS D in the evening peak hour and Saturday peak period. These improvements are shown on Exhibit B, attached hereto.

D. The **DEPARTMENT** shall inventory the existing transportation network and programmed improvements thereto within the **TID** area, which inventory shall include the following information:

1. Functional Class and Traffic Pattern Group;
2. Numbers, assignments and widths of lanes at each intersection;
3. Type of control at each intersection;
4. Typical section and type of pavement on each road segment;
5. Roadway geometry deficiencies in sufficient detail to determine whether the agreed upon Service Standards are met;
6. Presence, and frequency of transit service;
7. Any bicycle and pedestrian facilities not covered under Item 4 above.as

E. The **DEPARTMENT** shall determine what additional locations would need improvement to meet the Service Standards, in the target horizon year, and shall identify conceptually what improvements are needed in those locations.

F. The **DEPARTMENT** shall assemble the information identified in Paragraphs D and E above as the **LUTP**, which the parties hereto shall, upon review and approval, adopt as an Appendix to this Agreement.

G. When updating their Comprehensive Plans, the **COUNTY** and the **TOWN** shall consider the need to update the **LUTP** and shall initiate that effort if the land use forecast for the **TID** area has changed significantly. The parties hereto shall, upon review and approval, readopt the revised **LUTP** as an Appendix to this Agreement.

SECTION 5. TID CAPITAL TRANSPORTATION PROGRAM (TID-CTP)

A. For the deficient locations identified in the adopted **LUTP**, the **DEPARTMENT** shall identify a set of projects needed to address those deficiencies and shall develop cost estimates for those projects. The **DEPARTMENT** shall update the cost estimates periodically as needed. Subject to review and approval by the **COUNTY** and the **TOWN**, this set of projects shall constitute the **TID** Capital Transportation Program (**TID-CTP**).

B. The **COUNTY** and the **TOWN** shall, in odd numbered years to coincide with development of the DelDOT Capital Transportation Program, recommend projects from the **TID-CTP** for inclusion in the **DEPARTMENT**'s 6-year Capital Transportation Program. Inclusion of recommended projects shall be subject to the **DEPARTMENT**'s process for development of the 6-year program. Projects included in the **DEPARTMENT**'s 6-year Capital Transportation Program shall be eligible to receive funding from the **COUNTY** and the **TOWN** consistent with Paragraph 7D below, in addition to applicable State and Federal funds.

SECTION 6. DEVELOPMENTS EXCLUDED FROM PARTICIPATION

A. Where a proposed development is determined by the **DEPARTMENT** and the **COUNTY** or the **TOWN** to be inconsistent with the land use element of the **LUTP**, and to generate sufficient traffic to warrant a Traffic Impact Study (TIS), the **DEPARTMENT** and the **COUNTY** or the **TOWN** shall require a TIS and, as necessary, off-site improvements in accordance with the **DEPARTMENT**'s Development Coordination Manual.

B. The development of Minor Subdivisions. This exemption shall be limited to a maximum of one minor subdivision application per parent parcel.

SECTION 7. INFRASTRUCTURE FEE PROGRAM

A. The **COUNTY** or the **TOWN** shall require that any activity requiring a subdivision or site plan, except as provided in Section 6, within the Participant Boundary of the **TID** participate in the improvement of transportation facilities within the Facilities Boundary of the **TID** in accordance with the current **LUTP** and this **AGREEMENT**. The **DEPARTMENT** and the **COUNTY** or the **TOWN** shall require that the manner and extent of that participation be documented on the recorded subdivision or site plan and in a recorded infrastructure recoupment agreement with the developer. The manner of participation shall be through the payment of a fee, right-of-way dedication or the construction of physical improvements identified in the TID-CTP, or some combination thereof. The extent of participation shall be in accordance with Paragraph E below. The **COUNTY** shall collect any fees prior to issuance of building permits. The schedule for construction of physical improvements shall be specified on the recorded subdivision or site plan and in the recorded infrastructure recoupment agreement with the developer and shall be subject to approval by the **DEPARTMENT** and the **COUNTY** or the **TOWN**.

B. Dedication of rights-of-way in lieu of some or all of the fee shall be by agreement between the developer and the **DEPARTMENT**, with payment of the fee being required if any party is not amenable to the proposed dedication. The value of the rights-of-way to be dedicated shall be determined in accordance with **DEPARTMENT** policies and regulations. The creditable area shall be determined based on highway plans acceptable to the **DEPARTMENT** and shall exclude the standard dedications provided in **DEPARTMENT**'s Development Coordination Manual, rights-of-way for any proposed subdivision streets and any lands needed to accommodate the site entrance.

C. Design and/or Construction of physical improvements in lieu of some or all of the fee shall be by agreement between the developer, the **DEPARTMENT**, and the **COUNTY** or the **TOWN**, with payment of the fee being required if any party is not amenable to the proposed construction. If a developer seeks to design and/or construct physical improvements in lieu of paying the fee, the developer shall be required to obtain a minimum of three bids for the work. The bids shall be subject to review and approval by the

DEPARTMENT. Credit toward the fee shall be based on the developer's payments to the selected contractor. Design and Construction of improvements required by the **DEPARTMENT** and the **COUNTY** or the **TOWN** as part of the development's entrance construction or on-site infrastructure, e.g. subdivision streets, and curb ramps, turn lanes, acceleration lanes at development entrance, shall not be creditable toward the fee. At their discretion, the **DEPARTMENT** and the **COUNTY** or the **TOWN** may require improvements beyond the site entrance to correct an unsafe condition that they find would be created or worsened by the proposed development. Such improvements may include, but are not limited to, the addition or widening of shoulders, and/or the construction of a shared-use path or sidewalk along the development's frontage. In that case, the cost of that work shall be determined by the **DEPARTMENT**, using the Shared-Use Path and Sidewalk Fee Calculation Form for those items and current comparable contract bid prices as a guide for other items, and shall be creditable toward the fee.

D. The **COUNTY** shall create and administer a separate account or accounts expressly for the purpose of managing the funds needed to pay for design and construction costs of work identified in the **TID-CTP** under the terms of this **AGREEMENT**. The account shall be funded by Infrastructure Fee payments from developers as called for by this **AGREEMENT**. The **COUNTY** shall, at the **DEPARTMENT**'s request, transfer funding from the **TID** account to the **DEPARTMENT** for the design and/or construction of the improvements identified in the **TID-CTP**.

E. Developers shall participate in the improvement of transportation facilities within the Facilities Boundary of the **TID** in accordance with the current **LUTP** as follows:

1. In the Target Horizon Year, the **LUTP** shows that a total number of trips will be generated within the Participant Boundary of the **TID** in an average weekday evening peak hour. The total estimated cost to construct the improvements identified in the **TID-CTP** can also be determined. Development within the Participant Boundary of the **TID** can be grouped into broad land use categories, each with an associated trip generation per square foot or per dwelling unit. The **DEPARTMENT**, the **COUNTY**, and the **TOWN** will establish per unit costs for residential development and per square foot costs for non-residential development. Therefore, for each subdivision or site plan, the **COUNTY** or the **TOWN** shall require participation consistent with the established rates in Exhibit D, which amounts shall be adjusted annually as set forth in paragraph F below. Where there is a question as to how to characterize a specific development, the **COUNTY** or the **TOWN** shall refer to the **LUTP** and may consult the **DEPARTMENT** as necessary.

2. Maintenance activities are excluded from the **TID-CTP** and are not eligible for funding through the Infrastructure Fee Program.

F. While transportation improvement projects await construction funding, the costs of constructing the project will escalate at the rate of inflation for highway construction projects. The amounts paid by developers, therefore, shall be subject to an increase of up to four percent (4%) per year, not compounded, beginning on January 31, 2022 and increasing by the established amount on January 31 of each year thereafter. The actual amount of the increase shall be set by DelDOT in January of each year based upon the change in the Consumer Price Index (CPI) for Delaware Region during the previous year. The established rate shall not exceed four percent (4%) in any one year and escalation shall only apply to contributions unpaid on January 31 of each year.

SECTION 8. TRANSITIONAL RULES FOR DEVELOPMENTS PRIOR TO EXECUTION OF THIS AGREEMENT

A. The property owner and/or developer of any subdivision or site plan, submitted to the **DEPARTMENT** and/or the **COUNTY** or the **TOWN** before the effective date of this **AGREEMENT**, may request participation in the **TID** for that subdivision or land development plan, in lieu of completing a Traffic Impact Study and/or making off-site contributions.

B. Should existing Record Plan transportation improvement requirements conflict with the requested participation in the **TID**, the **DEPARTMENT**, the **COUNTY**, the **TOWN**, and the Property Owner shall work together to expedite the modification(s) to the Record Plan notes. The revision will be a ministerial review, incorporating the **TID** participation into the Record Plan notes. The **DEPARTMENT**, the **COUNTY**, and the **TOWN** review fees for this reconciliation will be considered satisfied from the initial Record Plan Review fees. For any other changes requiring a resubdivision plan and review, the associated fees will be the responsibility of the legal owner.

SECTION 9. MONITORING PROGRAM

A. The **DEPARTMENT** shall monitor traffic volumes within the Facilities Boundary of the **TID** and shall report to the **COUNTY** and the **TOWN** in calendar year 2025 and at regular intervals not to exceed every 5 yearstheir findings and their recommendations as to what improvements in the **TID-CTP** are needed at the time of the report and what improvements in the **TID-CTP** are likely to be needed in the next six years.

B. The extent of the monitoring effort shall be at the **DEPARTMENT**'s discretion but the **DEPARTMENT** will accommodate reasonable requests from the **COUNTY** or the **TOWN** for the inclusion of specific information.

SECTION 10. PUBLIC INVOLVEMENT

Absent a specific agreement to the contrary, to the extent that a public meeting, workshop or hearing is needed pertaining to procedural matters relating to this **AGREEMENT**, said public meeting, workshop or hearing shall be publicized and hosted by the **COUNTY** or the **TOWN**. The **DEPARTMENT** shall send appropriate representatives to such events as necessary. For specific improvements to be made in the **TID**, the **DEPARTMENT**'s Public Involvement Process shall govern.

SECTION 11. SCOPE OF AGREEMENT

This **AGREEMENT** constitutes the sole understanding by and between the **DEPARTMENT**, the **COUNTY**, and the **TOWN**, and nothing outside of this **AGREEMENT** shall be construed as an alteration, modification and/or revision hereof. This **AGREEMENT** shall not be modified except in writing subscribed by all parties.

SECTION 12. SUCCESSOR AND ASSIGNMENTS

The **DEPARTMENT**, the **COUNTY**, and the **TOWN** each binds itself, its successors, legal representatives, agents, employees, officers, and assigns, to each other to this Contract.

SECTION 13. LAWS OF DELAWARE

This **AGREEMENT** and the terms thereof shall be construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties hereunto have caused this **AGREEMENT** to be executed in quadruplicate, the date and year first above written.

FOR THE DELAWARE DEPARTMENT OF TRANSPORTATION:

Nicole Majeski, Cabinet Secretary DATE: 3/31/21

ATTEST:

Charlanne Thornton, Director, Finance DATE: 4/5/21

APPROVED AS TO FORM:

~~Charles Lees~~, Deputy Attorney General DATE: 3-30-2021
George T. Lees III

FOR KENT COUNTY:

Michael J. Petit de Mange, AICP, County Administrator DATE: 03-19-2021

FOR TOWN OF FREDERICA:

William C. Glanden DATE: 4-21-21

WILLIAM C. GLANDEN MAYOR

(Name, Title)

Exhibit A to accompany South Frederica TID Agreement

TID Boundary Map



Exhibit B to accompany South Frederica TID Agreement

TID Land Use Forecast and Preliminary Transportation Improvement

