



COUNCIL WORKSHOP
AUGUST 18, 2020

AUGUST 18, 2020 MINUTES: Council Workshop

COUNCIL MEMBERS PRESENT: Mayor Bennett, Mayor pro tem Elizabeth Morey, and Council Members Jim Conners and Leo Holland.

COUNCIL MEMBERS PARTICIPATING ELECTRONICALLY: Councilman Matt Neal

OTHERS PRESENT: Town Manager Cliff Ogburn, Deputy Town Manager/Planning Director Wes Haskett, Town Attorney Ben Gallop, Town Clerk Sheila Kane.

CALL TO ORDER / PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE

Mayor Bennett called the meeting to order at 9:00 A.M., led the Pledge of Allegiance, and held a moment of silence.

ADOPTION OF AGENDA

Councilman Holland moved to approve the agenda as presented. The motion was seconded by Mayor pro tem Morey. The motion passed unanimously (5-0).

CONSENT AGENDA

Councilman Holland moved to approve the consent agenda as presented. The motion was seconded by Mayor pro tem Morey. The motion passed unanimously (5-0).

PUBLIC COMMENT

Mayor Bennett called for comment, hearing no citizen wishing to speak he closed public comment.

BUSINESS ITEMS

Recycle Contract Update & Possible Budget Amendment

Deputy Town Manager Wes Haskett provided a report stating Town Staff has been working with the Town Attorney to draft an amendment to the Town's current contract with Bay Disposal for recycling. The draft amended contract establishes that our recyclable materials are to be taken to the RDS facility in Portsmouth, or another recycling facility if RDS should become unavailable. If other recycling facilities are unavailable, the materials are to be taken to a waste-to-energy facility. Bay Disposal is currently reviewing the draft amended contract and we are waiting on confirmation of acceptance. Town approval of the draft amended contract will enable the Town Manager to execute it if/when it is accepted by Bay Disposal. The proposed budget amendment would cover the difference in the cost of Bay Disposal's service as established in the draft amended contract. Town Staff recommends approval of

the draft amended contract and authorization for the Town Manager to execute the amended contract following acceptance by Bay Disposal. Town Staff also recommends approval of the proposed budget amendment.

Council was presented the following data containing recycle cost difference:

Bay Disposal Recycling

Current

Current rate- taking to Wheelabrator

6.59 per house per month

X 2394 homes

\$15,776.46 per month

X 12 months

\$189,317.52 total

Proposed

Rate for RDS to take recyclables

\$57.50 per ton for RDS to accept with glass

\$23.80 per ton for Bay to haul material to RDS

\$81.30 total

X 559.58 total tons from FY 18-19 solid waste report

\$45,493.85 total for year/2394 houses= \$19.00/ 12 months= \$1.58 per house for tonnage

\$1.58 tonnage

+\$5.21 pick-up price

\$6.79 per house

\$6.79 per house

X 2394 homes

\$16,255.26 per month

X 12 months

\$195,063.12 total

Difference = \$5,745.60

Councilman Neal stated Bay Disposal is still reviewing the contract, do we think they will accept the contract?

Town Manager Ogburn was confident the contract would be acceptable to Bay Disposal and Bay has worked out an agreement with RDS.

MOTION: Mayor pro tem Morey moved to approve the draft amended contract and authorizing the Town Manager to execute the amended contract. The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).

MOTION: Mayor pro tem Morey moved to approve the budget amendment as presented by staff (budget amendment #9 in the amount of \$5701.00). The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).

Annual Monitoring and Initial Permitting Task #2 Approval with Budget Amendment

At the May 5, 2020 meeting, Council was presented a proposal submitted by CPE-NC for professional services associated with annual monitoring of the beach for the year 2020. At that meeting, Council decided to delay initiation of task 2 until the current fiscal year when the work would be performed. The tasks associated with this proposal included:

TASK	DESCRIPTION	Cost
1	2020 Annual Beach Profile Data Acquisition	\$17,357.00
2	Annual 2020 Beach Profile Data Analysis and Report	\$18,039.00
3	Inter-Agency Coordination / BOEM G&G Permitting	\$12,202.50
TOTAL:		\$47,598.50

Task 2 is the report derived from the data collection taken from Task 1. Task 2 was labeled as “optional” to consider delaying the task until the current fiscal year, and reads:

TASK 2 - ANNUAL 2020 BEACH PROFILE DATA ANALYSIS AND REPORT

CPE-NC will conduct both shoreline and volume change analysis to evaluate volumetric and shoreline trends along the Town's oceanfront. The data collected will be used to evaluate project performance along the southern 2,500 feet of the Town's oceanfront, which was part of the 2017 project. Analysis will focus on the total shoreline and volume change that has occurred since the initial beach profile data acquisition conducted by CPE-NC in December 2017 as well as short-term changes that have occurred since May 2019. Results of the analysis will be included in the 2020 Monitoring report.

The cost of task 1, \$17,357, was covered by the funds remaining in the Beach Profile Study line item. However, task 1 was not completed at fiscal year end and \$5,208 is included in the budget amendment to cover the remaining cost in this year's budget. Funds were approved via budget amendment for task 3 which resulted in the addition of a new line item in the budget called Beach Nourishment Permitting.

At the last workshop meeting, Council voted to approve a separate proposal for Design and Environmental Permitting for the anticipated 2022 nourishment project in the amount of \$437,675.75.

Staff is requesting the Council to approve a motion to authorize the Town Manager to approve and initiate task 2 via letter of authorization to proceed to CPE-NC and to approve the associated budget amendment in the amount of \$23,247 (\$5,208 to complete remaining task 1 work and \$18,039 to complete task 2).

Councilman Holland asked if the survey would have an impact on FEMA reimbursement. Town Manager Ogburn stated if the town has a survey each year and then another one after a declared storm, we could potentially collect the fee for putting the sand back on the beach.

MOTION: Councilman Neal moved to approve proposed budget amendment in the amount of \$23,247.00 as presented by town staff. The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).

Outer Banks Hazard Mitigation Plan

Deputy Town Manager/Planning Director Wes Haskett stated local governments are required to have an adopted Hazard Mitigation Plan in order to be eligible for Federal and State grant funding and disaster assistance and they must be updated every five years. The main purpose of a Hazard Mitigation Plan is to reduce vulnerability to disasters. Hazard Mitigation Plans also enable local governments to gain points in the Community Rating System (CRS) program which results in lower flood insurance rates for property owners. The Town's currently adopted Hazard Mitigation Plan is the Albemarle Regional Hazard Mitigation Plan that was adopted on June 2, 2015.

In March 2019, work began on The Outer Banks Regional Hazard Mitigation Plan for Currituck County, Dare County, and all of its municipalities with the assistance of the Wood LLC consulting firm. The Town was represented on the Hazard Mitigation Planning Committee by Planning Board Chairperson Andy Ward, Permit Officer Dabni Shelton, and Deputy Town Manager/Planning Director Wes Haskett. Staff recommends adoption of the Outer Banks Hazard Mitigation Plan through Resolution 2020-08-01.

Mr. Haskett stated the sections that are pertinent to Southern Shores start on page 397. One of the most important pages is page number 416, containing the list of mitigation strategies.

Councilman Conners stated page 58 of the report addresses all the hazards that the county addressed or did not address. The three items the county chose not to address were sinkholes, electromagnetic pulse and infectious diseases/pandemic. He was in favor of approving the hazard mitigation report but in our reply, he would like to include a letter requesting they consider including infectious disease/pandemic in the next hazard mitigation plan.

MOTION: Mayor Bennett moved to adopt Resolution 2020-08-01. The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).

MOTION: Councilman Conners moved to authorize the Mayor to send a letter to the hazard mitigation control group requesting a provision addressing infectious disease/pandemic in the next plan. The motion was seconded by Mayor pro tem Morey. The motion passed unanimously (5-0).

Ordinance-Public Assembly Gatherings

Town Ordinance to address and establish procedures and rules regarding Public Assembly Gatherings and the permitting process.

Police Chief Kole stated planned protests here on the beach, as well as Elizabeth City, have taken place recently. All departments were asked to assist with resources. During the planning and putting resources together, he realized that Southern Shores was the only municipality that had no procedure for any type

of event like a protest, strike, picketing. He stated he felt it was his responsibility to bring it forward because of the vulnerability. Also, a responsibility to make sure we are not infringing on anyone's rights. Our job as police officers is to protect both sides. This proposed ordinance will give the town the ability to have some control and provide a clear process for those that may want to express their Constitutional Rights peacefully.

Councilman Holland asked who would be issuing the permit? Police Chief Kole stated the Town Manager or who he designates would be issuing the permit.

Police Chief Kole stated he had initially requested 72 hours' notice on the permit, same as other towns, but has been told by the Town Attorney that it will need to be no more than 24 hours. Chief Kole stated he felt 24 hours was not adequate notice.

Town Attorney Gallop stated he looked for reference from other municipalities before drafting the proposed ordinance. He looked at it as a public safety provision. He stated this is a police power ordinance that can be adjusted as needed, no public hearing is required.

Councilman Neal asked Town Attorney Gallop to clarify the definition of public assemblies as written in the ordinance, and if events such as races were included in this definition. Town Attorney Gallop stated events such as races did not fall within the definition of demonstration in this ordinance.

Councilman Neal stated he would rather see an ordinance that addressed all events, not just a demonstration that appears to target political views.

Town Attorney Gallop stated many municipalities separate permits for races versus demonstrations. You can limit or not allow events, such as races, but you need to be very clear if you are limiting people's speech.

Mayor pro tem Morey stated the Police Chief and Town Attorney did the best they could researching other municipalities with similar ordinances and in drafting the proposed ordinance. First amendment legal questions are constantly changing, and the ordinance can be amended as needed. She stated Police Chief Kole and Town Manager Cliff Ogburn stand behind it and therefore she is in favor of it and changes, if needed, can be made at the appropriate time.

MOTION: Mayor Bennett moved to adopt TCA 2020-08-01. The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).

Planning Board Appointment

Mayor Bennett briefed Council on the agenda item stating the Planning Board Vice Chairperson Don Sowder notified the Town on August 1, 2020 that he will soon be moving away from Southern Shores and resigned from the Town Planning Board. Mr. Sowder was appointed as a Regular Member of the Board on July 9, 2019 with a three-year term ending on June 20, 2022. Alternate members Lynda Burek and Robert McClendon have both expressed interest in filling the vacancy created by Mr. Sowder's departure. Lynda Burek was appointed as Alternate 1 on January 7, 2020 and Robert McClendon was appointed as Alternate 2 on January 7, 2020. There currently are no applications on file from citizens interested in serving on the Town Planning Board.

Councilman Conners stated in the spirit of transparency he is working on a job along with Robert McClendon and Mr. McClendon is fine remaining an alternate for now.

MOTION: Councilman Conners moved to appoint Lynda Burek as a regular member on the Town Planning Board with a term that is valid until June 30, 2022; and to appoint Robert McClendon as alternate #1. The motion was seconded by Mayor pro tem Morey. The motion passed unanimously (5-0).

Mayor Bennett called for a five-minute recess. Council reconvened at 10:25 a.m.

Interlocal Agreement Between the County of Dare and the Town of Southern Shores for Management of Funds from the Coronavirus Relief Fund (CRF) Established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act & Budget Amendment #10. Interlocal Agreement Between the County of Dare and the Town of Southern Shores for Management of Funds from the Coronavirus Relief Fund (CRF) Established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act and budget amendment reflecting the amount of money the Town is due to receive from Dare County as part of the Coronavirus Relief Fund Grant

Town Manager Cliff Ogburn briefed Council on North Carolina counties receiving funding for local governments as part of the Coronavirus Relief Fund (CRF) established under the federal CARES Act. The agreement with Dare County allocates \$37,088 to the Town. The Governor signed HB 1023 which is the second part of the State C19 Relief Fund. It requires each County to give 25% of the grand total of part 1 and part 2 to towns.

Dare's part 1 = \$852,149

Dare's part 2 = \$718,269

Dare's total = \$1,570,418 so \$392,605 of that amount goes to towns.

When the legislature mandated the 25% municipal share, North Carolina Pandemic Recovery Office determined that the most efficient way to administer funds to the municipalities was to pass them through the counties, but municipalities are still required to report monthly to NCPRO and also to submit plans to NCPRO on how they intend to spend their CRF allocation. Counties were also required to submit spending plans. Municipal plans are due to NCPRO by Sept. 1st; municipalities that do not submit plans by Sept. 1st will lose their CRF funds. In that case, the county may keep the funds or reallocate them to another municipality.

Town Manager Ogburn stated expenses incurred between March 1, 2020 and December 31, 2020 are eligible for reimbursement. Staff recommends the Council approve the attached Interlocal Agreement to receive CRF funds in the amount of \$37,088 to be put towards funding Coronavirus related expenses.

MOTION: Mayor Bennett moved to approve the Interlocal Agreement Between the County of Dare and the Town of Southern Shores for Management of Funds from the Coronavirus Relief Fund (CRF). The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).

MOTION: Mayor Bennett moved to approve budget amendment #10 in the amount of \$37,088. The motion was seconded by Councilman Conners. The motion passed unanimously (5-0).

Town Manager Cliff Ogburn stated he would like to introduce some topics and ideas and see if Council would want to follow up on the September agenda the following:

- Traffic engineer and recommendations
- Extended ocean rescue season
- Website update (staff is not ready to bring forward)
- Special events permit

Council by consensus, agreed to discuss the proposed agenda items.

COUNCIL COMMENTS

Councilman Holland spent time volunteering in Bertie County after the recent weather-related destruction and asked for everyone to keep the residents of Bertie County in their thoughts and prayers.

Mayor pro tem Morey thanked staff, the Town Manager, Town Attorney, Police Chief, and Public Works department for all their hard work.

ADJOURN

Hearing no other business, Mayor Bennett called for a motion to adjourn.

MOTION: Councilman Holland moved to adjourn the meeting. The motion was seconded by Mayor Bennett. The motion passed unanimously (5-0). The time was 10:44 a.m.

ATTEST:

Respectfully submitted,

Thomas G. Bennett, Mayor



Sheila Kane, Town Clerk

**Town of Southern Shores
Budget Amendment Number # 9**

**Sanitation
Increases**

Decreases

<u>Account Number</u>	<u>Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Description</u>	<u>Amount</u>
	<u>Revenues</u>				
40-39909	Unassigned Fund Balance	\$ 5,701			
	<u>Expenditures</u>				
52-50205	Recycling Pickup	\$ 5,701			

Explanation: The additional cost to have items recycled versus going to Wheelabrator.

Recommended By:

Cliff Ogburn, Town Manager

Approved By:

Tom Bennett, Mayor

Date

FIRST AMENDED AND RESTATED CONTRACT

THIS FIRST AMENDED AND RESTATED CONTRACT (the "Contract") is made and entered into this ____ day of _____, 2020, by and between Bay Disposal, LLC, a Virginia limited liability company ("BD"); and the TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation (the "Town") (BD and the Town may be referred to individually as a "Party and collectively as the "Parties"):

WITNESSETH:

WHEREAS, the Town and BD (who was previously known as Bay Disposal and Recycling, LLC) entered into a contract dated June 15, 2018 pursuant to which BD has been collecting and removing recycling materials from the Town (the "Original Contract");

WHEREAS, the Original Contract was amended on or about the ____ day of _____, 2020, pursuant to a document entitled "Amendment to Recycling Agreement By and Between Town of Southern Shores and Bay Disposal and Recycling, LLC" (the "First Amendment") (the Contract, as amended by the First Amendment, may be referred to as the "Existing Contract");

WHEREAS, the Existing Contract provides for BD to deliver recyclables to a qualified recycling facility, such as the Tide Water Fiber recycling facility, but the parties desired to have the recyclables delivered to a different facility, as set forth below;

WHEREAS, the parties desire to make certain other changes to the Existing Contract, which other changes are included as part of this Contract;

WHEREAS, to effectuate the above changes, the parties desired to amend and restate the Existing Contract in its entirety as set forth in this this Contract.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Services Generally.**

(a) BD shall collect and remove recycling materials from all residential, commercial, business, municipal, and governmental premises within the corporate limits of the Town of Southern Shores, North Carolina, subject to the terms and conditions set forth in this Contract. BD shall acquire title to the recycling material that it collects pursuant to this Contract when BD takes possession of such material by loading it into its truck. The consideration paid by the Town to BD pursuant to this Contract is for BD (i) to collect and remove the recycling materials from the Town ; and (ii) perform such other services as are set forth in this Contract (collectively the "Services").

(b)

(i) (A) BD shall deliver all non-contaminated recyclable materials (defined below) to RDS of Virginia, LLC, a Virginia limited liability company, with principal offices located at 623 N Witchduck Rd, Suite 108, Virginia Beach, Virginia ("RDS"), so long as RDS shall "recycle" such materials by placing them into the recycling stream, or, if RDS is not available to receive and recycle the recyclable materials, to some other recycling facility that will recycle the materials by placing them into the recycling stream, if available. If such a recycling facility is available, but BD will incur more than 10% additional cost per ton of materials to use such recycling facility, then BD shall provide the Town with sufficient information and an opportunity to decide if the Town desires for BD to use the proposed recycling facility at an additional cost per unit per month to the Town. If the cost for BD to dispose of recyclable materials decreases by more than 10% per ton, then BD shall adjust the base rate charged to the Town accordingly and make the Town aware of the change.

(B) BD shall provide the Town with at least 30-days written notice of any proposed increase in the costs to BD for the disposal of recyclable materials in a manner consistent with this Contract for which BD expects to request an increase in the base rate charged to the Town. The Town shall not be required to accept any proposed increase in the base rate.

(ii) If no recycling facility is available, as set forth in the above Section 1(b)(i), then BD may deliver the non-contaminated recycling materials to a duly permitted waste-to-energy facility, such as the Wheelabrator facility.

(iii) BD shall not dispose of any non-contaminated recyclable materials in a landfill.

(iv) For the purposes of this Contract:

(1) "Non-contaminated recycling materials" shall mean recycling materials that are sufficiently free from contamination so as to be accepted for recycling by RDS or such other recycling facility to whom BD is delivering the said materials.

(c) BD shall furnish all personnel, labor, equipment and supervision necessary to fulfill its duties under this Contract. BD shall use only personnel qualified to perform its duties under this Contract and shall see that all work is performed in an efficient and workmanlike manner. BD shall require each employee to be courteous at all times, to work quietly and shall not allow the use of loud or profane language. BD shall require each employee to work in a

diligent manner. BD shall immediately investigate any notice of employee misbehavior and take prompt and appropriate action. Any official or employee of BD who is under the influence of alcohol or drugs or demands pay from any resident of the Town for services rendered, or verbally or physically abuses any resident of a dwelling unit or an employee or agent of the Town, shall be immediately removed from work under this Contract and shall provide no other service to the Town.

(d) BD shall be responsible for payment of any and all fees, costs, or taxes imposed on the disposal of recycling materials that are collected by BD from the Town pursuant to this Contract. BD shall be entitled to retain any payments received for recycling materials collected pursuant to this Contract from RDS or such other entity to whom BD may deliver the recycling materials pursuant to the terms of this Contract.

2. **Term.** The term of the Contract shall commence when executed and shall continue until midnight on June 30, 2021. Thereafter, the term of this Contract may be renewed by mutual agreement of the parties for consecutive additional one (1) year periods.

3. **Scheduling of Recycling Collection and Bulk Pickup.**

(a) During the term of this Contract, collection and removal of all recycling materials shall be made between the hours of 3:00 a.m. and 6:00 p.m. on Wednesday, year-round. If any collection day falls on a legal holiday, then such collection shall be made the next business working day. Legal holidays for the purpose of this Contract are Memorial Day, Independence Day, Labor Day, New Year's Day, Thanksgiving Day, and Christmas Day. BD will advise the Town at least four weeks in advance that collection will not occur on a day observed as a legal holiday and on which date collection will occur. The Town Manager and Public Works Director shall be notified immediately in the event that scheduled collection cannot be met due to mechanical or other unforeseen delays. BD agrees that in the event of equipment breakdown, strike or any other occurrence which would delay or prevent timely performance of its obligations under this Contract, that it shall take all actions reasonably necessary, including but not limited to, replacement of equipment and personnel in order to assure restoration of normal service within twenty-four (24) hours from the time of occurrence.

(b) BD will perform bulk item pickup on behalf of the Town twice per year, once in the Spring and once in the Fall. Exact dates of bulk item pickup are to be scheduled with input from Town officials at a minimum of one month ahead of schedule so that the Town has adequate time to notify residents of the impending event. Items included in bulk item pickup are furniture, mattresses, appliances that do NOT contain CFCs, exercise equipment, hot tub covers, and yard and vegetative debris bagged in clear or brown paper bags. Items not included in bulk item pickup include recycling materials, basketball goal posts, televisions, construction and demolition debris including paint, gasoline, oil and other chemicals, tires, soil, rocks, concrete, and tree stumps. BD will make every attempt to complete large item pickup in one business day,

but may return to complete it on a second day immediately following the first scheduled day if it is not possible to complete the event in one day due to volume. The Town will post rules and regulations instructing residents and business owners on what is eligible for bulk item pickup.

4. **Consideration.** The consideration to be paid by the Town for the Services, other than the bulk item pickup services, provided by BD under this contract, shall be: (a) **\$5.21** per month per residential or commercial unit/location located within the Town's corporate boundaries; plus (b) **\$23.80** per ton of recyclable material collected. The consideration to be paid by the Town for each of bulk item pickup conducted pursuant to Section 3(b) shall be \$3,500 per bulk item pickup conducted throughout the Town. The cost of the bulk pickup will be revaluated based on tonnage from the two collections made in 2018-2019, and the compensation to be paid by the Town for each bulk item pickup conducted after the execution of this Contract may be altered by agreement of the parties, provided however, the price for each bulk item pickup shall not exceed \$10,258. The foregoing pricing is based on 2,395 total estimated units/locations that are providing recycle materials within the Town's corporate boundaries to be collected by BD. Either party may request that a unit/location count be performed at any time during the term of this Contract and if such revised unit/location count reflects more or fewer units, all billing for the following fiscal year shall be adjusted to apply the new total number of units/locations. BD shall invoice the Town on a monthly basis for the Services provided during the prior month. Once the Town approves each such invoice, it shall pay said invoice.

5. **Recycling Receptacles.**

(a) Residential, heavy duty, two-wheeled 95 gallon lidded recycling receptacles shall be provided by BD to residents of the Town upon request for a flat fee of \$90.00 per receptacle. BD will provide a list of property owners who have purchased receptacles to the Town upon request, including street address, name and date of purchase, and quantity of cans purchased. Extra recycling receptacles may be purchased at a cost of \$90.00 each.

(b) Any recycling receptacles provided by BD to residents under this Contract will become the property of the residents who purchase the receptacles.

(c) All recycling will be placed in proper receptacles owned by the property owners with lids securely closed and placed in the right-of-way adjacent to the premises of the owner or occupant, at the edge or curb of the street at a reasonably accessible location for collection.

(d) BD will not be required to dispose of non-recycling materials except during times of bulk item pickup.

(e) The Town shall publish rules and regulations governing the manner in which owners or occupants of residences and businesses within the Town shall store and place recycling for pickup pursuant to this Contract.

(f) Recycling receptacles shall not be thrown or handled in a rough or careless manner during collection, but shall be used and handled with care, usual wear and tear excepted, and BD shall be liable for negligent and unnecessary damages caused to such receptacles.

(g) Where receptacles containers are rusted or otherwise so badly damaged as to be unsanitary or unsafe for handling, or not placed properly for pickup, a warning notice shall be given to the owner or occupant of the premises by the attaching of an appropriate notice to the receptacle, and that if correction of the said condition is not made within seven (7) days by the owner or occupant, then the container and the contents will not be picked up; *provided, however*, if the container is so badly damaged so as to be too unsafe to be serviced, said warning notice may be provided and then the container may be omitted from pick up until such unsafe condition is corrected.

6. Office Hours; Complaints; Refusal or Failure to Collect:

(a) BD shall maintain an office at which a responsible person can be reached by telephone during regular working hours of 8:00 a.m. to 4:30 p.m. to answer questions about recycling pick-up service with personnel sufficient to receive and handle complaints and to receive communication from the Town Manager or Public Works Director. BD shall supply an emergency telephone number for use in the event of after-hour emergencies.

(b) In the event of a complaint to BD that a receptacle has not been collected or has been missed, it shall be the duty of BD to address such complaints. BD shall then take whatever steps may be necessary to remedy the complaint and steps to remedy the complaint must be taken on or before 9:30a.m. on the next business day after the complaint has been received. BD will maintain a complaint log form, and a copy of this completed form and corrective actions taken will be submitted to the Town upon request. BD office personnel answering the phone will receive call and record appropriate information from each resident (name, date, phone number, address, time, comments). The person taking the message will immediately contact the driver and receive the driver's input. BD's Operations Manager will also be notified by the office, and he or she will either return the phone call or go to the site of the complaint and address the complaint the same service day.

(c) When service is refused at any eligible dwelling unit, information shall be provided to that dwelling unit by BD describing the reasons for the refusal, included as provide in Section 5(g), and the appropriate remedial action which must be taken in order to have the bin collected in the future. BD shall also contact the Town by the end of the day when services have been refused and provide the Town the reasons for the refusal. This notice may be by fax, electronic mail or other written communication. BD may telephone the Town and follow the oral notice with written communication provided the oral and written notices are made on the same day as the refusal.

7. Weighing Material; Records; Scales.

(a) BD shall be responsible for operating and maintaining in good condition its truck scales and associated equipment.

(b) BD shall maintain accurate weigh scales records for the purposes of determining the total weight of recycling material leaving the Town and shall keep detailed daily records of the same. BD shall provide a copy of this record each month to Town for billing purposes and shall provide a copy of this record to the RDS or such other entity to whom BD is delivering recycling materials pursuant to this Contract.

8. Trucks, Routes, and Dumpsters.

(a) BD shall make the recycling collection in enclosed trucks or vehicles. The vehicles shall be in good working order, shall be cleaned regularly in accordance with any applicable Health Department regulations (at sites suitable, appropriate and approved for cleaning said trucks or vehicles), shall have a presentable appearance, and shall be marked with recycling signage for identification purposes.

(b) Collection routes within the Town may include private streets which may be too narrow for a side loading vehicle to collect and empty recycling receptacles. In addition, the available turning radius may not accommodate standard collection vehicles. BD shall collect recyclables from the said private streets as part of the Services provided pursuant to this Contract. BD will be responsible for determining an acceptable method of collection for these private streets and arranging for any special accommodations that may be necessary to collect recyclables in these areas.

(c) Collection routes may also include locations that currently receive garbage collection services via dumpster due to neighborhood configuration. BD shall collect recyclables from the residences identified in this paragraph as part of the Services provided pursuant to this Contract. BD will be responsible for determining an acceptable method of collection and arranging for any special accommodations that may be necessary to collect recyclables in these areas.

9. Compliance with Laws, Spillage.

(a) BD shall remove and dispose of all recycling materials pursuant to this Contract only in such manner as is permitted and authorized by law, and shall comply with all rules, regulations, and laws applicable to the collection and removal of recycling materials.

(b) BD is responsible for picking up and removing any materials that have blown out or dropped from trucks or the collection receptacles for any reason, even if a return trip is required. Leaks and spills shall be handled quickly and appropriately based on the type and amount and according to State and Federal spill response guidelines. Equipment shall be well

maintained so as not to allow liquid or solid waste to leak or blow out of the collection equipment.

10. **Public Information Program.** BD shall design and implement a program for the purpose of informing those who will be receiving curbside recycling services concerning the proper method for preparing recyclable materials, use of the recycling container, role of curbside recycling, date and time of program initiation. This program will include distribution of informational brochures to eligible dwelling units. The cost for this program shall be borne by BD and all proposed activities, brochures, mailings, advertisements, etc. shall be approved by the Town prior to use. BD will deliver brochures or such other information on residential curbside recycling, which is produced by the Town on request by the Town.

11. **Change in Service Area and Equipment.**

(a) Should the current boundaries of the Town change during the term of this Contract, then this Contract shall be adjusted accordingly to reflect any increase or decrease in the residential, commercial, and business premises receiving recycling collection services under this Contract.

(b) Changes to the type, size, and amount of recycling receptacles, the type of frequency of service, and corresponding adjustments to the rates, may be made by mutual written agreement of the Parties. This Contract shall continue in effect for the term provided herein and shall apply to changes of and new service units or locations within the area in which BD provides the collection services under this Contract.

12. **Independent Contractor and Indemnity.**

(a) BD shall be deemed an independent contractor and shall assume all liability and responsibility for any and all damages to persons and/or property resulting from the performance of its duties under this Contract.

(b) To the extent allowed by applicable law, BD shall indemnify, defend and hold harmless the Town and its officers, employees, and agents from and against all liability, claims, suits, losses, damages, costs and demands on account of any personal injury, including death of any person, or property damage, sustained by any person or entity, arising out of or connected with the performance by BD of its duties under this Contract where such injury, death or damage is caused in whole or in part or alleged to have been caused, in whole or in part, by the negligent acts or omissions of BD or its officers, employees, agents or subcontractors.

13. **Insurance.** BD shall carry the following insurance which shall be with a reputable company duly licensed to do business in North Carolina:

(a) Workmen's Compensation of all employees who may be involved in any way in the performance of this Contract or in the Services in connection therewith.

(b) Commercial general liability insurance in the amount of \$1,000,000.00 combined single limit.

(c) Vehicle fleet liability (business automobile coverage) in the amount of \$1,000,000.00 combines single limit.

14. **Breach and Termination.**

(a) If, during the term of this Contract, either Party shall be in breach of any provision of this Contract, the other Party may suspend or terminate its performance hereunder until such breach has been corrected; provided, however, that no such suspension or termination shall occur unless and until the complaining Party has given written notice of such breach to the other Party and the other Party has failed to cure such breach within at least ten (10) days thereafter. In the event any such breach remains uncured for a period of ten (10) days following the provision of such notice, the complaining Party may then suspend or terminate this Agreement by giving the other Party written notice of such suspension or termination; which shall become effective upon receipt of such notice. Any such suspension shall cease when the breach which led to such suspension is cured and the complaining Party is provided with evidence of such cure.

(b) Either Party may voluntarily terminate this Contract by providing 60-days' notice in writing to the other Party. If either Party desires to terminate this Contract due to costs or pricing, that Party must request in writing to the other Party that negotiations occur regarding costs and pricing. Upon the failure of negotiations to reach a resolution satisfying both Parties or upon the expiration of fifteen (15) days or such other amount of time agreed upon by the Parties from the date of the request, the Party desiring to terminate may terminate the Contract upon 30-days written notice to the other Party.

15. **Binding Effect.** This Contract shall be binding upon the Parties hereto, their successors and assigns. This Contract may not be assigned by BD without prior written approval of the Town.

16. **Force Majeure.** Neither Party hereto shall be liable for its failure to perform or delay in performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, compliance with laws or governmental order, fires, severe weather events, and acts of God and such failure shall not constitute a default under this Contract.

17. **Amendment and Restatement of Existing Contract.** This Contract shall amend and restate the Existing Contract in its entirety; thus, upon the execution of this Contract, the terms and conditions of this Contract shall govern and replace the Existing Contract in its entirety.

18. **E-Verification.** BD represents and warrants that it has ensured and will ensure for itself and each subcontractor that it uses to perform obligations under this Contract, that either:

(a) BD or subcontractor employs less than 25 employees who are employed for 9 months or more during a 12-consecutive-month period; or

(2) BD or subcontractor: (a) employs 25 or more employees who are employed for 9 months or more during a 12-consecutive-month period; and (b) has used the E-Verify program, which program is operated by the United States Department of Homeland Security and is defined in N.C. Gen. Stat. § 64-25(5), to verify the work authorization of each employee.

19. **Governing Law.** This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice of the State of North Carolina or in the Federal District Court for the Eastern District of North Carolina, and the parties hereby submit to venue in and the personal jurisdiction of the said Courts.

20. **Miscellaneous.**

(a) This document constitutes the entire contract between the Parties and may only be modified by a written mutual agreement signed by the Parties.

(b) The provisions of this Contract are separate and divisible. In the event that any provision of this Contract shall be held invalid, the remaining provisions shall be construed and shall be valid as if the invalid provisions were not a part of this Contract.

(c) This Contract shall not become effective, nor should it be considered binding, until it has been preaudited as evidenced by the finance officer's signature on the preaudit certificate.

SIGNATURE PAGE TO FOLLOW

Both the Town of Southern Shores and Bay Disposal, LLC agree to the above contract.

Bay Disposal, LLC, a Virginia limited liability company

By: _____
Name: _____
Title: _____

Town of Southern Shores, a North Carolina municipal corporation

By: _____
Name: _____
Title: _____

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

Finance Officer



Agenda Item Summary Sheet

Date: August 18, 2020

Item #: 3B

Item Title: Beach Profile/Survey Approval – Task # 2

Item Summary: At its May 5, 2020 meeting, Council was presented a proposal submitted by CPE-NC for professional services associated with annual monitoring of the beach for the year 2020. At that meeting, Council decided to delay initiation of task 2 until the current fiscal year when the work would be performed.

The tasks associated with this proposal included:

TASK	DESCRIPTION	Cost
1	2020 Annual Beach Profile Data Acquisition	\$17,357.00
2	Annual 2020 Beach Profile Data Analysis and Report	\$18,039.00
3	Inter-Agency Coordination IBOEM G&G Permitting	\$12,202.50
TOTAL:		\$47,598.50

Task 2 is the report derived from the data collection taken from Task 1. Task 2 was labeled as "optional" to consider delaying the task until the current fiscal year, and reads:

TASK 2 - ANNUAL 2020 BEACH PROFILE DATA ANALYSIS AND REPORT

CPE-NC will conduct both shoreline and volume change analysis to evaluate volumetric and shoreline trends along the Town's oceanfront. Furthermore, the data collected will be used to evaluate project performance along the southern 2,500 feet of the Town's oceanfront, which was part of the 2017 project. Analysis will focus on the total shoreline and volume change that has occurred since the initial beach profile data acquisition conducted by CPE-NC in December 2017 as well as short-term changes that have occurred since May 2019.

Results of the analysis will be included in the 2020 Monitoring report. Deliverables include two (2) hardcopies of the report with CD or USB drive, which will include digital versions of the report, appendices, and data. In addition to the report, one (1) in-person meeting is included to present

The cost of task 1, \$17,357, was covered by the funds remaining in the Beach Profile Study line item. However, task 1 was not completed at fiscal year end and \$5,208 is included in the attached budget amendment to cover the remaining cost in this year's budget. Funds were approved via budget amendment for task 3 which resulted in the addition of a new line item in the budget called Beach Nourishment Permitting. The Council approved this action by a vote of 5-0.

As a reminder, at its last workshop meeting, Council voted to approve a separate proposal for Design and Environmental Permitting for the anticipated 2022 nourishment project in the amount of \$437,675.75.

Staff Recommendation: Staff is requesting the Council to approve a motion to authorize the town manager to approve and initiate task 2 via letter of authorization to proceed to CPE-NC and to approve the associated budget amendment in the amount of \$23,247 (\$5,208 to complete remaining task 1 work and \$18,039 to complete task 2).

Attachments:

- 1- 2020 Annual Monitoring and Initial Permitting Contract
- 2- 2020 Annual Monitoring June Invoice
- 3- CPE Project Update Letter – dated July 22, 2020
- 4- minutes taken of this item at May 5, 2020 Council meeting

**Town of Southern Shores
Budget Amendment Number # 8**

**Streets, Beaches, Canals
Increases**

**Police
Decreases**

Account Number	Description	Amount	Account Number	Description	Amount
40-39909	Revenues Unassigned Fund Balance	\$ 23,247			
57-50135	Expenditures Beach Profile Study	\$ 23,247			

Explanation: To finish Task #1 from FY 19-20 and new funding for Task #2

Recommended By:

Approved By:

Cliff Ogburn, Town Manager

Tom Bennett, Mayor

Date



COASTAL PROTECTION ENGINEERING OF NORTH CAROLINA, INC
4038 MASONBORO LOOP ROAD
WILMINGTON, NC 28409
910-399-1905

April 29, 2020

Wes Haskett
Interim Town Manager/Planning Director
Town of Southern Shores
5375 N. Virginia Dare Trail
Southern Shores, NC 27949

Re: **Proposal: Town of Southern Shores 2020 Annual Monitoring and Initial Permitting Coordination**

Dear Mr. Haskett:

Coastal Protection Engineering of North Carolina, Inc. (CPE-NC) is pleased to provide this proposal for professional services to the Town of Southern Shores (TOWN), associated with the 2020 Annual Monitoring. This proposal also includes initial regulatory/resource agency coordination and coordination with the Bureau of Ocean Energy Management (BOEM) to obtain Geophysical and Geological (G&G) permits for offshore investigations. CPE-NC has a special preferred relationship with Coastal Protection Engineering LLC (CPE), and through that relationship, CPE-NC will utilize personnel, resources, and assets of CPE to perform the proposed services. Furthermore, CPE-NC will sub-contract portions of the data acquisition and BOEM G&G permitting work to Aptim Environmental & Infrastructure LLC.

The Scope of Professional Services (the Services) is attached to this proposal as Exhibit A. The Work included under Tasks 1 and 3 will be performed for a lump sum fee of \$29,559.50. If the TOWN approves optional Task 2, those Services will be performed for a lump sum fee of \$18,039.00.

Breakdown of Costs and Schedule of Deliverables:

Exhibit B includes a breakdown of costs by Task. Barring any unforeseen circumstances, CPE-NC anticipates the 2020 data acquisition to be completed by June 30, 2020. Draft reports will be provided within 120 days of the conclusion of data acquisition.

Exhibit C provides a list of deliverables, which includes the following:

- Monthly Progress Reports
- Annual Beach Monitoring Report
- Beach Profile Data Appendix and
- Meeting Minutes from Inter-Agency Meeting; and
- BOEM Permit Applications

CPE-NC's performance of the proposed Services is conditioned upon negotiation of mutually acceptable contract terms and conditions. In that regard, attached to this proposal is our standard Services



Agreement for your consideration as the terms and conditions that will govern our performance of the proposed Services.

If this proposal is acceptable to you, please have the attached Services Agreement signed, and return it to me. CPE-NC will then sign the Services Agreement and return a fully executed copy to you for your records.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Willson".

Ken Willson

Senior Program Manager

Coastal Protection Engineering of North Carolina, Inc

Office: 910-399-1905

Mobile: 910-443-4471

kwillson@coastalprotectioneng.com

COASTAL PROTECTION ENGINEERING OF NORTH CAROLINA, INC.
SERVICES AGREEMENT
FIXED PRICE BASIS

All in accordance with the following terms and conditions.

1. **SCOPE OF SERVICES:** **COASTAL PROTECTION ENGINEERING OF NORTH CAROLINA, INC. ("CPE-NC")** agrees to perform for the undersigned CLIENT, engineering and consulting ("Services") described in the attached Proposal and/or as follows:

2020 Annual Monitoring and Initial Permitting Coordination, Town of Southern Shores, North Carolina

2. **FEES, INVOICES AND PAYMENTS:** Tasks 1 and 3 of The Services will be performed for a lump sum fee of **\$29,559.50 (Twenty-nine thousand, five hundred fifty-nine dollars and fifty cents)**. If the CLIENT approves optional Tasks 2, those Services will be performed for a lump sum fee of **\$18,039.00 (Eighteen thousand, thirty-nine dollars and zero cents)**.

Invoices will be submitted by CPE-NC no more frequently than every month, with payment due upon CLIENT'S receipt of invoice. Payment shall be in U.S. Dollars. CLIENT shall be responsible for payments (without deduction or offset from the total invoice amount) of any and all sales, use, value added, gross receipts, franchise and like taxes, tariffs and duties levied against CPE-NC or its employees by any government or taxing authority. A service charge equal to one-half percent (1/2 %) per month, or the maximum rate permitted by law, whichever is less, will be added to all accounts which remain unpaid for more than thirty (30) calendar days beyond the date of the invoice. Should there be any dispute as payments to be made on a percent complete basis to any portion of an invoice, the undisputed portion shall be promptly paid.

3. **CLIENTS COOPERATION:** To assist CPE-NC in performing the Services, CLIENT shall (i)

provide CPE-NC with relevant material, data, and information in its possession pertaining to the specific project or activity, (ii) consult with CPE-NC when requested, (iii) permit CPE-NC reasonable access to relevant project sites, (iv) ensure reasonable cooperation of CLIENT's employees in CPE-NC's activities, and (v) notify and report to all regulatory agencies as required by such agencies.

4. **CONFIDENTIALITY:** In the course of performing Services, to the extent that CLIENT discloses to CPE-NC, business or technical information that CLIENT clearly marks in writing as confidential or proprietary, CPE-NC will exercise reasonable efforts to avoid the disclosure of such information to others. Likewise, to the extent that CPE-NC discloses to CLIENT, business or technical information that CPE-NC clearly marks in writing as confidential or proprietary, CLIENT will exercise reasonable efforts to avoid the disclosure of such information to others.

Nothing herein is meant to prevent nor shall be interpreted as preventing either party from disclosing and/or using any information or data (i) when the information or data are actually known to the receiving party before being obtained or derived from the transmitting party, (ii) when information or data are generally available to the public without the receiving party's fault at any time before or after it is acquired from the transmitting party; (iii) where the information or data are obtained or acquired in good faith at any time by the receiving party from a third party who has the same in good faith and who is not under any obligation to the transmitting party in respect thereto; (iv) where a written release is obtained by the receiving party from the transmitting party; (v) three (3) years from the date of receipt of such information; or (vi) when required by process of

law; or by North Carolina Public Records Law; provided, however, upon service of such process, the recipient thereof shall use reasonable efforts to notify the other party and afford it an opportunity to resist such process.

5. DELAYS AND CHANGES IN CONDITIONS:

If CPE-NC is delayed or otherwise in any way hindered or impacted at any time in performing the Services by (i) an act, failure to act or neglect of CLIENT or CLIENT's employees or any third parties; (ii) changes in the scope of the work; (iii) unforeseen, differing or changed circumstances or conditions including differing site conditions, acts of force majeure (such as fires, floods, riots, and strikes); (iv) changes in government acts or regulations; (v) delay authorized by CLIENT and agreed to by CPE-NC; or (vi) any other cause beyond the reasonable control of CPE-NC, then 1) the time for completion of the Services shall be extended based upon the impact of the delay, and 2) CPE-NC shall receive an equitable compensation adjustment. Any such equitable adjustment shall be based on CPE-NC's then current Time and Material Rates, as may be provided in a Rate sheet attached hereto.

6. INSURANCE: CPE-NC is presently protected by Worker's Compensation Insurance as required by applicable law and by General Liability and Automobile Liability Insurance (in the amount of \$1,000,000 combined single limit) for bodily injury and property damage. Insurance certificates will be furnished to CLIENT on request. If the CLIENT requires further insurance coverage, CPE-NC will endeavor to obtain said coverage, and CLIENT shall pay any extra costs therefor.

7. INDEMNITIES: CPE-NC shall defend, indemnify and hold harmless CLIENT and its officers and employees from and against loss or damage to tangible property, or injury to persons, to the extent arising from the negligent acts or omissions or willful misconduct of CPE-NC, its borrowed servants and their employer and its subcontractors, and their respective employees

and agents acting in the course and scope of their employment. CLIENT shall defend, indemnify and save harmless CPE-NC (including its borrowed servants and their employers and its officers, and employees) from and against, any loss or damage to tangible property, or injury to persons, to the extent arising from the negligent acts or omissions or willful misconduct of CLIENT, its officers and employees.

8. LIMITATIONS OF LIABILITY:

a. GENERAL LIMITATION - CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED BREACH OF WARRANTY BY CPE-NC SHALL BE TO REQUIRE CPE-NC TO RE-PERFORM ANY DEFECTIVE SERVICES. CPE-NC'S LIABILITY AND CLIENT'S REMEDIES FOR ALL CAUSES OF ACTION ARISING HEREUNDER WHETHER BASED IN CONTRACT, WARRANTY, NEGLIGENCE, OR ANY OTHER CAUSE OF ACTION, SHALL NOT EXCEED EXCEPT FOR THE MUTUAL INDEMNIFICATIONS SET FORTH IN SECTION 7 ABOVE. IN THE CUMULATIVE AGGREGATE (INCLUDING ANY INSURANCE PROCEEDS) WITH RESPECT TO ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHATEVER MINIMUM AMOUNT MAY BE REQUIRED BY LAW OR, IF NONE, THE AMOUNT OF COMPENSATION FOR SUCH SERVICES,

b. CONSEQUENTIAL DAMAGES: FURTHER AND REGARDLESS OF ANY OTHER PROVISION HEREIN, CPE-NC SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, DECLINE IN PROPERTY VALUE, REGULATORY AGENCY FINES, LOST PRODUCTION OR LOSS OF USE) INCURRED BY CLIENT OR FOR WHICH CLIENT MAY BE LIABLE TO ANY THIRD PARTY OCCASIONED BY THE SERVICES OR BY APPLICATION OR USE OF REPORTS OR OTHER WORK PERFORMED HEREUNDER.

9. **GOVERNING LAWS:** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.
10. **TERMINATION:** Either party may terminate this Agreement with or without cause upon forty five (45) days' written notice to the other party. Upon such termination, CLIENT shall pay CPE-NC for all Services performed hereunder up to the date of such termination. In addition, if CLIENT terminates, CLIENT shall pay CPE-NC all reasonable costs and expenses incurred by CPE-NC in effecting the termination, including, but not limited to non-cancelable commitments and demobilization costs.
11. **ASSIGNMENT:** Neither CPE-NC nor CLIENT shall assign any right or delegate any duty under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, CPE-NC may, upon notice to CLIENT, assign, pledge or otherwise hypothecate the cash proceeds and accounts receivable resulting from the performance of any Services or sale of any goods pursuant to this Agreement.
12. **MISCELLANEOUS:**
- a. **ENTIRE AGREEMENT, PRECEDENCE, ACCEPTANCE MODIFICATIONS:** The terms and conditions set forth herein constitute the entire understanding of the Parties relating to the provisions of the Services by CPE-NC to the CLIENT. All previous proposals, offers, and other communications relative to the provisions of these Services by CPE-NC, oral or written, are hereby superseded, except to the extent that they have been expressly incorporated by reference herein. In the event of conflict, the three pages of this Agreement shall govern. CLIENT may accept these terms and conditions by execution of this Agreement or by authorizing CPE-NC to begin work. Any modifications or revision of any provisions hereof or any additional provisions contained in any purchase order, acknowledgement or other document issued by the CLIENT is hereby expressly objected to by CPE-NC and shall not operate to modify the Agreement.
- b. **DISPUTES, ATTORNEY FEES** – Any dispute regarding this Agreement or the Services shall be resolved first by exchange of documents by senior management of the parties, who may be assisted by counsel. Any thereafter unresolved disputes shall be litigated in the state whose law governs under Section 9 hereunder. In any litigation, the Prevailing Party shall be entitled to receive, as part of any award or judgment, eighty percent (80%) of its reasonable attorneys' fees and costs incurred in handling the dispute. For these purposes, the "Prevailing Party" shall be the party who obtains a litigation result more favorable to it than its last formal written offer (made at least twenty calendar days prior to the formal trial) to settle such litigation.
- c. **WAIVER OF TERMS AND CONDITIONS** - The failure of CPE-NC or CLIENT in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in the Agreement or the waiver by CPE-NC or CLIENT of any breach of the terms or conditions of this Agreement shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.
- d. **NOTICES** – Any notices required hereunder may be sent by orally confirmed US Mail, courier service (e.g. FedEx), orally confirmed telecopy (fax) or orally confirmed email (further confirmed by US Mail) to the addresses set forth below.
- e. **SEVERABILITY AND SURVIVAL** - Each provision of this Agreement is severable from the others. Should any provision of this Agreement be found invalid or unenforceable, such provision shall be ineffective only to the extent required by law, without invalidating the remainder of such provision or the remainder of this Agreement.

Further, to the extent permitted by law, any provision found invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable consistent with the parties' intent. The terms and conditions set forth herein shall survive the termination of this Agreement.

CLIENT and CPE-NC agree to the foregoing (INCLUDING THE LIMITATIONS ON LIABILITY IN SECTIONS herein) and have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

Executed on May 7, 2020

COASTAL PROTECTION ENGINEERING OF NORTH CAROLINA, INC.

By (Sign): [Signature]
Print Name: Kenneth Willson
Title: President
Address: 4038 Masonboro Loop Rd
Wilmington, NC 28409
Phone: 910-399-1905
Fax: N/A
E-mail: Kwillson@CoastalProtectioneng.com

TOWN OF SOUTHERN SHORES, NORTH CAROLINA

By (Sign): [Signature]
Print Name: Wes Haskett
Title: Interim Town Manager
Address: 5375 N. Virginia Dare Trl
Southern Shores, NC 27949
Phone: 252-261-2394
Fax: 252-255-0876
E-mail: whaskett@southernshores-nc.gov

- Approval of tasks 1 + 3 only at this time. [Signature]

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

Bonnie Seari
Finance Officer
Date: 5/6/20

EXHIBIT "A"
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2020 ANNUAL MONITORING AND INITIAL PERMITTING COORDINATION

Coastal Protection Engineering of North Carolina, Inc. (hereinafter "CPE-NC") proposes to provide professional services to the Town of Southern Shores (hereinafter the "TOWN"), associated with 2020 annual monitoring of the TOWN's beach; and initial regulatory/resource agency coordination and coordination with the Bureau of Ocean Energy Management (BOEM) to obtain Geophysical and Geological (G&G) permits for offshore investigations. CPE-NC will sub-contract portions of the data acquisition and BOEM G&G permitting work to Aptim Environmental & Infrastructure LLC (APTIM) as a sub-contractor.

Each task is described in detail in the following sections.

TASK 1 – 2020 ANNUAL BEACH PROFILE DATA ACQUISITION

2020 beach profile data acquisition will be conducted along the TOWN to evaluate volume and shoreline change trends as well as performance of the portion of the TOWN's beach constructed in 2017. Furthermore, these data will be used to design the proposed 2022 beach project should the Town decide to move forward with such a project. The 2020 beach profile data acquisition will be conducted prior to June 30, 2020. Topographic data will be collected along each beach profile to include the dune, berm, and foreshore section of the beach, while bathymetric data will be collected along the offshore portion of the profile. Beach profile data acquisition will be conducted along twenty (20) profiles spaced approximately 1,000 feet apart. These twenty (20) profiles are from approximately baseline station -10+00 (located near Sea Bass Circle) to baseline station 187+14 (near 11th Avenue) within the Town of Southern Shores. Data for the beach profile located at the border of Southern Shores and Kitty Hawk (baseline station 0+00) and at the border of Southern Shores and Duck (baseline station -197+12) by the Town's of Kitty Hawk and Duck, respectively.

Costs for mobilization of equipment and personnel to and from the project area will be costs shared with the Towns of Duck, Kitty Hawk, and Kill Devil Hills as data acquisition will be conducted concurrently. Additional mobilization costs will be required if monitoring data acquisition is conducted independently of the Towns of Duck, Kitty Hawk and Kill Devil Hills.

Beach profiles will extend landward from their respective baseline station until a structure is encountered or a range of 25 feet beyond the dune is reached, whichever is seaward. Elevation measurements will also be taken seaward along the profile to a range of 3,000 feet beyond the shoreline or to the -30 NAVD88 contour, whichever is more landward.

Land-based or "upland" data collection will include all grade breaks and changes in topography to provide a representative description of the conditions at the time of the work. The maximum spacing between data points along individual profiles will be 25 feet. The upland work will extend into wading depths sufficiently to provide a minimum

EXHIBIT "A"
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2020 ANNUAL MONITORING AND INITIAL PERMITTING COORDINATION

50-foot overlap with the offshore data. This overlap between the topographic and bathymetric data acquisition provides quality control and quality assurance.

The hydrographic work or "offshore" portions of the beach profiles will be conducted with industry standard depth sounding equipment and real-time kinematic (RTK) global navigation satellite system (GNSS). Tide corrections will be obtained redundantly with RTK GNSS and a local tide gauge verified to meet the requirements for the specific work. Offshore data points shall also be collected with a maximum spacing of 25 feet.

Horizontal and vertical positioning checks will be conducted at the beginning and end of each day of data acquisition to confirm that control is undisturbed and meets the accuracy standards of this project with a horizontal limit of 0.66 feet and a vertical limit of 0.16 ft. for all electronic equipment. Vertical positioning checks for depth measuring equipment will be conducted at 5 ft. increments between -5 ft. and at least -25 ft. NAVD88. Sound velocity casts will be conducted at the project site at the start and end of each day of data acquisition to calibrate the sounding equipment.

As an appendix to the 2020 monitoring report described under Task 2, CPE-NC will provide the TOWN with a beach profile data appendix. This appendix will include methodology, field notes for the data acquisition, control information, profile plots, cross sections, and digital XYZ data.

TASK 2 – ANNUAL 2020 BEACH PROFILE DATA ANALYSIS AND REPORT (OPTIONAL)

CPE-NC will conduct both shoreline and volume change analysis to evaluate volumetric and shoreline trends along the Town's oceanfront. Furthermore, the data collected will be used to evaluate project performance along the southern 2,500 feet of the Town's oceanfront, which was part of the 2017 project. Analysis will focus on the total shoreline and volume change that has occurred since the initial beach profile data acquisition conducted by CPE-NC in December 2017 as well as short-term changes that have occurred since May 2019.

Results of the analysis will be included in the 2020 Monitoring report. Deliverables include two (2) hardcopies of the report with CD or USB drive, which will include digital versions of the report, appendices, and data. In addition to the report, one (1) in-person meeting is included to present the findings of the monitoring report to the TOWN.

TASK 3 – INTER-AGENCY COORDINATION / BOEM G&G PERMITTING

In order to expedite the design and permitting of both the scheduled 2022 beach nourishment project and a potential Hurricane Dorian damage repair project, CPE-NC proposes to immediately engage federal and state agencies in two areas regarding permitting. The first involves the coordination, participation, and meeting documentation reporting associated with, an inter-agency scoping meeting with State and Federal

EXHIBIT "A"
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2020 ANNUAL MONITORING AND INITIAL PERMITTING COORDINATION

regulatory and resource agencies. The second is coordination with BOEM regarding geophysical and geological (G&G) permits for offshore borrow area investigations.

With respect to services associated with an inter-agency scoping meeting with State and Federal regulatory and resource agencies, CPE-NC will coordinate with agencies to schedule the meeting. In preparation of the meeting, CPE-NC will produce a project description and presentation and distribute that to participants ahead of time. Both the CPE-NC project manager and senior marine biologist who will be in charge of developing the environmental documentation for the project, will both participate in the meeting. Following the meeting, CPE-NC will develop meeting minutes and distribute them to participants.

With respect to the coordination for BOEM G&G permits, CPE-NC and its sub-consultant APTIM will first update the previously conducted desktop analysis of historic data. We will then develop a reconnaissance-level and design-level survey plan and finally we will use this information to prepare and submit the necessary information to apply for G&G permits. Each of these tasks are described in greater detail below:

Sand Search Desktop Study

CPE-NC and our sub-consultant APTIM, will begin updating the geologic desktop study conducted in 2014 to further evaluate the potential presence/absence of sand resources offshore the Towns of Duck, Southern Shores, Kitty Hawk, and Kill Devil Hills. We will conduct the desktop study by reviewing historic geophysical (seismic-reflection, chirp sub-bottom, sidescan sonar, etc.) and geotechnical (borings, vibracores, surface samples, etc.) data compiled previously by CPE-NC and incorporating newly available information that falls within the area of interest, into our ArcGIS database. We will review scientific research for the survey area in question, and attempt to acquire any newly available or historic data from research and regulatory institutions, including University of North Carolina Wilmington, East Carolina University, Bureau of Ocean Energy Management, the United States Geological Survey, and the United States Army Corps of Engineers, etc.

Reconnaissance-Level and Design-Level Survey Plan Development

A Reconnaissance- and Design-Level Geophysical and Geological Survey Plan will be developed based off the results of the desktop study. The goal of the survey plan will be to design a survey that will attempt to identify sand sources located closer than existing Borrow Area A to the project sites. The successful development of a borrow area located closer to the projects sites may ultimately result in reduced construction costs.

Sand Search Permitting

After the desktop study and development of a Reconnaissance- and Design-Level Survey Plan, applications will be prepared and submitted for the required geological and geophysical (G&G) prospecting permits from BOEM. Our efforts are anticipated to focus on the offshore waters which are located seaward of the state waters, falling under the

EXHIBIT "A"
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2020 ANNUAL MONITORING AND INITIAL PERMITTING COORDINATION

jurisdiction of BOEM. The offshore surveys (geophysical and geotechnical) will require authorization from BOEM. In addition to preparing and submitting the applications, we will respond to any requests for additional information. We will coordinate with BOEM and incorporate mitigation protocol necessary (as required by BOEM) to adhere to conditions of the authorizations in order to conduct the future surveys. Status updates and final deliverables will also be provided to BOEM as required in the authorizations. Note, no field work is included as part of this scope of work. All reconnaissance- and design-level investigations identified in the Survey Plan will need to be authorized under a separate agreement after the development of the Survey Plan.

The scope of work and cost associated with Task 3 has been developed under the assumption that these services will be cost shared between the 4 Towns of Duck, Southern Shores, Kitty Hawk, and Kill Devil Hills. Therefore, the cost associated with Task 3, reflected in Appendix B – Breakdown of Cost, is 25% of the total cost to complete Task 3. Should any of the 4 Towns decide not to proceed with these efforts, the scope and/or cost for the other 3 Towns may need to be re-adjusted.

**EXHIBIT B:
BREAKDOWN OF COSTS
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2020 ANNUAL MONITORING AND INITIAL PERMITTING COORDINATION**

Table 1. Breakdown of the total cost of the 2020 Annual Monitoring and Initial Permitting Coordination associated with the Town of Southern Shores Beach Management Program.

TASK	DESCRIPTION	Cost
1	2020 Annual Beach Profile Data Acquisition	\$17,357.00
2	Annual 2020 Beach Profile Data Analysis and Report (OPTIONAL)	\$18,039.00
3	Inter-Agency Coordination / BOEM G&G Permitting	\$12,202.50
TOTAL:		\$47,598.50

Tasks 1 and 3 will be performed for a lump sum fee of \$29,559.50. If the TOWN approves optional Task 2, those Services will be performed for a lump sum fee of \$18,039.00.

**EXHIBIT C:
LIST OF DELIVERABLES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2020 ANNUAL MONITORING AND INITIAL PERMITTING COORDINATION**

The following items have been identified by Coastal Protection Engineering of North Carolina, Inc. (hereinafter "CPE-NC") as deliverables to the Town of Southern Shores (hereinafter "TOWN") for the completion of this scope of work.

- Monthly Progress Reports;
- Annual Beach Monitoring Report;
- Beach Profile Data Appendix;
- Meeting Minutes from Inter-Agency Meeting; and
- BOEM Permit Applications.

A detailed description and an individual schedule for each deliverable are provided below.

Monthly Progress Reports: CPE-NC will provide a one (1) page summary of the project status via e-mail approximately every 30 days during the anticipated 5-month contract period. The letter will describe activities completed throughout the month and update the anticipated schedule of milestones as appropriate.

Beach Monitoring Report: Upon completion of the beach profile data acquisition described in Task 1 of the Scope of Services, CPE-NC will provide a draft beach monitoring analysis report to the TOWN. The monitoring report will include description of methodology and results of the shoreline change and volume change analysis. Barring any unforeseen circumstances, a draft report will be provided within 120 days following completion data acquisition operations. Within two weeks following receipt of comments by the Town on the draft report, CPE-NC will prepare a Final report and provide to the TOWN two hardcopies of the report with CD's/USB drives, which will include digital versions of the report, appendices, and data. In addition to the report, one in-person meeting is included to present the findings of the monitoring report to the TOWN.

Beach Profile Data Appendix: Upon completion of the beach profile data acquisition described under Task 1, CPE-NC will provide a record of the methodology used to acquire the data as well as data acquisition notes, control information, profile plots, cross sections, and digital XYZ data. Barring any unforeseen circumstances, a draft of this appendix will be provided within 90 days following completion of data acquisition operations. The final appendix will be provided in both hard copy and digital copy along with the Beach Monitoring Report.

Meeting Minutes from Inter-Agency Meeting: Following the inter-agency meeting described under Task 3, CPE-NC will develop meeting minutes and distribute them to participants. These minutes will also become part of the record for the environmental documentation required for the

**EXHIBIT C:
LIST OF DELIVERABLES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2020 ANNUAL MONITORING AND INITIAL PERMITTING COORDINATION**

project permitting. Barring any unforeseen circumstances, draft meeting minutes will be provided within 14 days of following the meeting.

BOEM Permit Applications: Applications will be prepared and submitted for the required geological and geophysical (G&G) prospecting permits from BOEM. CPE-NC will provide the Town a copy of the complete permit application package as a deliverable to this proposal. Barring any unforeseen circumstances, draft meeting minutes will be provided within 45 days of receiving written notice to proceed.



Coastal Protection Engineering
of North Carolina Inc.
4038 Masonboro Loop Road
Wilmington, NC, 28409
Tel: 910-399-1905

Town of Southern Shores
5375 N. Virginia Dare Trail
Southern Shores, NC, 27949

July 20, 2020
Invoice #358
Due Upon Receipt

Consultants Project #2020033
Billing Period: Through 6/30/2020

Professional Engineering Services Invoice For:
Town of Southern Shores 2020 Annual Monitoring and Initial Permitting Coordination

Description	Contract Amount	Percent Complete	Prior Billed	Total Billed	Current Billed
Task 1 – Annual Beach Profile Data Acquisition	17,357.00	70%	\$0.00	\$12,149.90	\$12,149.90
Task 2 – Annual Data Analysis and Report*	18,039.00	0%	\$0.00	\$0.00	\$0.00
Task 3 – Inter-Agency Coordination / BOEM G&G Permitting	12,202.50	95%	\$6,101.00	\$11,592.13	\$5,491.13
Sub-Total	47,598.50		\$6,101.00	\$23,742.03	\$17,641.03

AMOUNT DUE \$17,641.03

* Task 2 has not been authorized at this time.

Please remit to:
5301 N. Federal Highway, Suite 335
Boca Raton, FL, 33487



COASTAL PROTECTION ENGINEERING OF NORTH CAROLINA, INC
4038 MASONBORO LOOP ROAD
WILMINGTON, NC 28409
910-399-1905

July 22, 2020

Cliff Ogburn
Town Manager
Town of Southern Shores
5375 N. Virginia Dare Trail
Southern Shores, NC 27949

Re: Invoice for June 2020 and Project Update

Dear Mr. Ogburn:

This letter serves as an update to you and your staff on our progress with regards to task orders on which Coastal Protection Engineering of North Carolina, Inc. (CPE) is currently providing services to the Town of Southern Shores. Along with this update letter, please find attached the following Invoice:

Southern Shores 2020 Annual Monitoring and Initial Permitting Coordination

- **Invoice 358 – July 20, 2020**

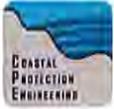
Southern Shores 2020 Annual Monitoring and Initial Permitting Coordination:

This work is associated with the agreement executed on May 7, 2020 between CPE and the Town of Southern Shores. Invoice 358 reflects services completed through June 30, 2020. Task 1 services are associated with data acquisition for the 2020 annual monitoring surveys. On June 8, CPE and APTIM field crews mobilized to Dare County and began data acquisition. By June 15, all the beach profile data had been collected. By early July, data had been processed and data analysis had begun. At present, staff are working on the draft data acquisition report.

Task 2, which includes data analysis and the annual monitoring report, has not been authorized by the Town at this time.

Task 3 services include inter-agency coordination with regulatory agencies regarding the proposed 2022 project, as well as coordination with the Bureau of Ocean Energy Management (BOEM) to secure G&G permits for offshore sand resource investigation. As previously reported, CPE coordinated and lead a meeting of regulatory and resource agencies in late April and provided meeting minutes for that meeting on May 14.

With regards to the second part of Task 3, CPE worked with our sub-contractor APTIM, to conduct a desktop study of the offshore area to determine potential investigation areas for future sand resources. The report, which details the desktop study, was completed on May 29, 2020. BOEM Geophysical and Geotechnical (G&G) permit applications were developed and submitted to BOEM on June 5, 2020. After coordinating with



BOEM and making some updates to the application, a final package was submitted on June 17. At this point, we anticipate beginning the sand source investigations in August under the agreement between CPE and the Town executed July 13, 2020 for permitting and design.

Design and Environmental Permitting Services, 2022 Beach Nourishment Project:

This work is associated with the agreement executed on July 13, 2020 between CPE and the Town of Southern Shores and therefore, no invoice for this work is included with this letter. However, I do want to provide you an update on our progress. At present, we have begun developing environmental documentation associated with Task 1 and data collection associated with the modeling component of Task 2. During the beach monitoring data acquisition operations, CPE staff conducted the native beach sampling described in Task 4 and the rock clast surveys described in Task 5, of the scope of services.

At present, staff continues to work on the development of environmental documents for the project. Data gathering and formatting is currently taking place in preparation for the setup of the regional flow and wave numerical model. As far as Task 3, we have begun planning operations and expect mobilization of field crews in late August. We are still waiting on BOEM permits for the Geophysical and Geotechnical (G&G) investigations to be issued.

Please let me know if you have questions or comments on the invoice or project status.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Willson".

Ken Willson
Senior Program Manager
Coastal Protection Engineering of North Carolina, Inc.

Office: 910-399-1905

Mobile: 910-443-4471

kwillson@coastalprotectioneng.com

Town of Southern Shores Regular Council Meeting Exert from May 5, 2020 Minutes

BEACH PROFILE/SURVEY FUNDING APPROVAL- POSSIBLE BUDGET AMENDMENT-Interim Town Manager Wes Haskett.

Mr. Haskett reported the proposal submitted by Ken Willson consists of three tasks: Annual Beach Profile Data Acquisition at a cost of \$17,357, Annual 2020 Beach Profile Data Analysis and Report at a cost of \$18,039, and Inter-Agency Coordination / BOEM Geological and Geophysical Permitting at a cost of \$12,202.50.

I spoke with Ken Willson again today and confirmed that the data analysis and report task would not be undertaken prior to June 30th so we are withdrawing that part of the budget amendment request.

The beach profile data acquisition will be done by June 30th and the \$17,357 can be covered by the funds remaining in the Beach Profile Study line item. \$45,000 was budgeted this current fiscal year and \$26,000 has been spent which covered the beach profile monitoring analysis and report conducted last fall as well as the change order to cover the update to the Town's Beach Management Plan to update the goals and project options that include the entire beach.

The inter-agency coordination/BOEM Geological and Geophysical Permitting cost is our share (25%) of the total cost for CPE-NC to move forward with initial permitting for a 2022 beach nourishment project with Duck, Kitty Hawk, and Kill Devil Hills. A scoping meeting was held on April 29th with CPE-NC, representatives from the three Towns, Dare County, and numerous representatives from State and Federal agencies. Should Council wish to move forward with the inter-agency coordination and permitting, we recommend a budget amendment for the \$12,203 to be added to a new line item in the budget called Beach Nourishment Permitting.

MOTION: Councilman Conners moved to approve the Budget Amendment in the amount of \$12,203.00 and a new line item "beach nourishment permitting" created. The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).



Agenda Item Summary Sheet

Date: 8/18/2020

Item #: 3C

Item Title: Outer Banks Hazard Mitigation Plan

Item Summary: Local governments are required to have an adopted Hazard Mitigation Plan in order to be eligible for Federal and State grant funding and disaster assistance and they must be updated every five years. The main purpose of a Hazard Mitigation Plan is to reduce vulnerability to disasters. Hazard Mitigation Plans also enable local governments to gain points in the Community Rating System (CRS) program which results in lower flood insurance rates for property owners. The Town's currently adopted Hazard Mitigation Plan is the Albemarle Regional Hazard Mitigation Plan that was adopted on June 2, 2015.

In March, 2019, work began on The Outer Banks Regional Hazard Mitigation Plan for Currituck County, Dare County, and all of its municipalities with the assistance of the Wood LLC consulting firm. The Town was represented on the Hazard Mitigation Planning Committee by Planning Board Chairperson Andy Ward, Permit Officer Dabni Shelton, and Deputy Town Manager/Planning Director Wes Haskett. The Plan, meeting agendas, meeting minutes, and other project information can be found on the project website at <http://www.obx-hmp.com/> (link on Town website under Planning & Code Enforcement Dept., Hazard Mitigation).

Staff Recommendation: Adoption of the Outer Banks Hazard Mitigation Plan through Resolution 2020-08-01.

Requested Action: Should Council choose to adopt the Outer Banks Hazard Mitigation Plan, a motion to adopt Resolution 2020-08-01, with subsequent second and vote of approval, will be required.

Attachments: Resolution 2020-08-01



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

www.southernshores-nc.gov

Town of Southern Shores Resolution Adopting the Outer Banks Regional Hazard Mitigation Plan Resolution # 2020-08-01

WHEREAS, the Town of Southern Shores is vulnerable to an array of natural hazards that can cause loss of life and damages to public and private property; and

WHEREAS, the Town of Southern Shores desires to seek ways to mitigate situations that may aggravate such circumstances; and

WHEREAS, the development and implementation of a hazard mitigation plan can result in actions that reduce the long-term risk to life and property from natural hazards; and

WHEREAS, it is the intent of the Southern Shores Town Council to protect its citizens and property from the effects of natural hazards by preparing and maintaining a local hazard mitigation plan; and

WHEREAS, it is also the intent of the Town of Southern Shores to fulfill its obligation under North Carolina General Statutes, Chapter 166A: North Carolina Emergency Management Act and Section 322: Mitigation Planning, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to remain eligible to receive state and federal assistance in the event of a declared disaster affecting the Town of Southern Shores; and

WHEREAS, the Town of Southern Shores, in coordination with Dare County and Currituck County, and the Towns of Duck, Kitty Hawk, Kill Devil Hills, Nags Head, and Manteo has prepared a regional hazard mitigation plan with input from the appropriate local and state officials;

WHEREAS, the North Carolina Division of Emergency Management and the Federal Emergency Management Agency have reviewed the Outer Banks Regional Hazard Mitigation Plan for legislative compliance and has approved the plan pending the completion of local adoption procedures;

NOW, THEREFORE, BE IT RESOLVED that the Southern Shores Town Council hereby adopts the Outer Banks Regional Hazard Mitigation Plan and agrees to take such other official action as may be reasonably necessary to carry out the proposed actions of the Plan.

Thomas G. Bennett, Mayor

Date:

SEAL:

Sheila Kane, Town Clerk



Agenda Item Summary Sheet

Date: 08/18/2020

Item #: 3D

Item Title: **Public Assembly Gatherings**

Item Summary: *Town Ordinance to address and establish procedures and rules regarding Public Assembly Gatherings and the permitting process.*

Staff Recommendation: *The Town currently does not have any ordinance to address Public Assembly Gatherings, leaving the town vulnerable, especially under current conditions throughout the United States. This Ordinance will give the town the ability to have some control and provide a clear process for those that may want to express their Constitutional Rights peacefully.*

Requested Action: *I would ask that the Mayor and Town Council pass this proposed Ordinance.*

Attachments: *Town Attorney will provide the finalized ordinance to Town Council.*

Submitted by; D. Kole



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

info@southernshores-nc.gov

www.southernshores-nc.gov

TCA-2020-08-01

AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. Chap. 160A, the Town has duly codified the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, pursuant to North Carolina General Statutes § 160A-174 the Town may enact and amend ordinances that define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the Town, and may define and abate nuisances; and

WHEREAS, the Town finds that it is necessary to enact regulations allowing for public assemblies consistent with the North Carolina and United States Constitutions and the paramount rights of individuals and groups to express themselves; and

WHEREAS, the Town finds that in order to provide reasonable accommodations for the right to freedom of expression in a manner consistent with the public's health, safety and general welfare, that the Town must enact regulations requiring permits be issued for public assemblies, creating an application process for issuance of said permits and placing certain public safety regulations upon those activities; and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety and general welfare for the Town to amend the Town Code of Ordinances as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipses ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Town Code.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

1
2 **PART I** That **Chapter 22 Art. III. CAMPING.** be amended to designate Sections
3 22-65 — 22-80 as reserved.

4
5 **PART II.** That **Chapter 22 Art. IV. PUBLIC ASSEMBLIES.** be added as follows:

6
7 **Sec. 22-81 Definitions.**

8
9 The following words, terms and phrases, when used in this article, shall have the meanings
10 ascribed to them in this section, except where the context clearly indicates a different
11 meaning:

12
13 Public assembly means any assembly or concert of action between or among any
14 two or more persons for the purpose of protesting or demonstrating for or against
15 any matter, of making known any position or promotion of such persons or matter
16 or of or on behalf of any organization, group, corporation or class of persons or for
17 the purpose of attracting attention to such assembly. Public assemblies include, but
18 are not limited to, parades, picketing and other demonstrations.

19
20 **Sec. 22-82. Permits required.**

21
22 No person shall organize, conduct or participate in any public assembly of greater than ten
23 (10) persons in or upon any street, sidewalk, alley or other public place within the town
24 unless a permit therefore has been issued by the town in accordance with the provisions of
25 this article.

26
27 **Sec. 22-83. Procedures for obtaining permit.**

28
29 Application for a public assembly permit shall be made in writing at least forty-eight (48)
30 hours and no more than three hundred sixty-five (365) days before the time at which the
31 public assembly shall be scheduled to begin and shall contain the following information:

- 32
33 (1) The name, if any, of the organization or group sponsoring or proposing the public
34 assembly;
35
36 (2) The location or locations where the public assembly is proposed to take place;
37
38 (3) The date and hours for which the permit is sought;
39
40 (4) The estimated number of persons who will participate and/or attend the public
41 assembly;
42
43 (5) The name of the person applying for the permit;
44
45 (6) Whether or not persons below the age of eighteen (18) years are expected to
46 participate; and

1
2 (7) The name of the person or persons to be in charge of the public assembly and who
3 will accompany the public assembly and carry the permit at all times. If that person
4 is not the applicant for the permit, the application shall also include the written
5 signed consent of the person to be in charge of the public assembly.
6

7 (b) Upon receipt of an application properly completed and timely filed as hereinabove set
8 out, the Town Manager or his designee shall immediately issue a permit consistent with
9 the standards prescribed herein. The permit shall contain all information stated on the
10 application and shall be signed by the Town Manager or his designee.
11

12 **Sec. 22-84. Person in charge of activity.**
13

14 The person designated on the application and the permit as being in charge of the public
15 assembly shall accompany the public assembly and carry the permit at all times.
16

17 **Sec. 22-85. Permit contents.**
18

19 The permit shall set the starting time, duration, speed of travel and space between persons
20 or vehicles in the parade, picket line or group demonstration, shall prescribe the portions
21 or areas of streets, alleys, sidewalks or other public places to be used and shall impose such
22 other reasonable requirements as the Town Manager may prescribe for the control and free
23 movement of pedestrian and vehicular traffic or for the health, safety and property rights
24 of the participants and the general public.
25

26 **Sec. 22-86. Prohibited acts.**
27

28 The following acts or activities, when performed or undertaken in conjunction with or as a
29 part of any public assembly are prohibited and declared unlawful:

30 (A) The carrying on or about the person of any firearm or any weapon or article,
31 including but not limited to blackjacks, nightsticks/baton or flashlights, which by their use
32 might constitute a deadly weapon; and
33

34 (B) The taking along of any dog or vicious animal, whether leashed or unleashed. This
35 prohibition shall not apply to a trained service animal to work or perform tasks and/or aid
36 to an individual with a disability.
37

38 (B) Unreasonable interference with the right of property owners in the vicinity of the
39 public assembly to enjoy peaceful and lawful occupancy and use of their property.
40

41 (C) The violation of any law or ordinance of the town, the State of North Carolina or
42 the United States, including, but not limited to inciting riots, disorderly conduct, criminal
43 trespass and violent crimes.
44

45 (D) Taking actions during the public assembly which constitute a clear and present danger
46 to the public health or safety or would unreasonably hinder or prevent the orderly

1 movement of pedestrian or vehicular traffic on the streets, alleys or sidewalks. Public
2 assemblies shall not at any time nor in any way unreasonably obstruct, interfere with, or
3 block: persons entering or exiting from vehicles; persons crossing streets or otherwise
4 using the public way; the entrance or exit to any building or access to property abutting the
5 street or sidewalk; a driveway serving any building or abutting property; or pedestrian or
6 vehicular traffic.

7
8 (E) Any actions that could be detrimental to or endanger the health safety, or welfare
9 of any minors participating in or attending the public assembly including the holding of the
10 public assembly at a time or place that would be detrimental to or endanger the health,
11 safety or welfare of such minors.

12
13 (F) Conducting the public assembly in a manner that unreasonably interferes with
14 pedestrian traffic, vehicular traffic, police response, fire response or emergency medical
15 response.

16
17 (G) Conducting or participating in a public assembly without a required permit or
18 following the revocation of a permit previously issued.

19
20 **Sec. 22-87 Additional picketing standards.**

21
22 Picket lines and picketing shall be subject to the regulations in this subchapter in addition
23 to those listed elsewhere in this article and Chapters 20 & 28 as well as the following
24 regulations:

25
26 (A) *Locations.* Picketing shall be conducted only on the areas, shoulders or sidewalks
27 reserved for pedestrian movement and shall not completely block sidewalk(s) and
28 shall not be conducted on the portion of a street used primarily for vehicular traffic.

29
30 (B) *Number Allowed.* The number of pickets or signs promoting the same objective on
31 any sidewalk or two sidewalks shall not grow to such a number as to cause
32 disruption or distraction for nearby drivers. Where no sidewalk is present, this shall
33 apply to town right of way (ROW).

34
35 (C) *Size and Content of Signs.* Pickets/demonstrators may carry written or printed
36 placards or signs, not exceeding three feet in width and three feet in length,
37 promoting the objective for which the picketing is done, provided, the words used
38 are not obscene as defined by the state statute.

39
40 (D) *Marching.* Pickets shall march in an orderly fashion and remain entirely on the
41 sidewalk and curblin where provided whenever possible. Marchers and picketers
42 shall make all reasonable efforts to continue moving so as to not cause issue with
43 the flow of traffic or other pedestrian movement.

44
45 **Sec. 22-88. Additional parade standards.**

1 The following standards shall apply to all parades conducted in the town:

- 2
- 3 (a) No parade or part thereof may be conducted on the streets of the town between
4 the hours of 7:00p.m. and 8:00a.m. or on a Saturday or Sunday between
5 Memorial Day and Labor Day.
- 6
- 7 (b) Every parade shall follow a route approved by the Town Manager or his
8 designee. The Town Manager or designee shall approve no route which is
9 incompatible with the preservation of public health, safety and welfare. The
10 Town Manager or designee's disapproval of a proposed route may be appealed
11 to the Town Council by filing a written notice of appeal with the Town Clerk
12 within ten (10) days of the disapproval. Such appeal shall be heard by the Town
13 Council at its next regular meeting occurring more than ten (10) days after the
14 filing of the notice of appeal.

15

16 **Sec. 22-89. Revocation of permits.**

17

18 The Town Manager or his designee shall revoke any permit granted for a public assembly
19 for:

- 20
- 21 (A) Any violation by any participant of Sec. 22-86, 22-87 or 22-88; or
- 22
- 23 (B) Failure of the public assembly and its participants to conform to the terms of the
24 application and associated permit.

25

26 **Sec. 22-90. Interference with public assembly; Authority to disperse crowds; Failure**
27 **to leave when ordered.**

28

29 (a) It shall be unlawful for any person to physically interfere with a public assembly or to
30 address obscene, indecent, or threatening language or fighting words to or at those
31 participants which would tend to provoke them or others to a breach of the peace.

32

33 (b) The police officers of the town may, in the event of the assemblage of persons in such
34 numbers as to tend to intimidate participants in a public assembly pursuing their lawful
35 objective through numbers alone or through use of inflammatory words, direct the dispersal
36 of persons so assembled and may arrest any person who fails to absent himself from the
37 place of such assemblage when so directed by the police.

38

39 (c) Whenever the free passage of any street or sidewalk in the town shall be obstructed by
40 a crowd, whether or not the crowd assembles as a result of or in connection with public
41 assembly, the persons composing such crowd shall disperse or move on when directed to
42 do so by a police officer. It shall be unlawful for any person to refuse to so disperse or
43 move on when so directed by a police officer as herein provided.

44

45 **PART III** That **Sec. 1-6. – General penalty; enforcement of ordinances; continuing**
46 **violations.** be amended as follows:

1
2 ...
3 (b) Violation of any provision of the following chapters and sections of this Code shall be
4 a class 3 misdemeanor and punishable by a fine of not more than \$500.00 as provided in
5 G.S. 14-4(a):

6 ...
7 (5) Chapter 4, sections 4-22 through 4-27; chapter 22, sections 22-1 through 22-10
8 and sections 22-81 through 22-90.

9 ...
10
11 **ARTICLE IV. Severability.**

12
13 All Town ordinances or parts of ordinances in conflict with this ordinance amendment are
14 hereby repealed. Should a court of competent jurisdiction declare this ordinance
15 amendment or any part thereof to be invalid, such decision shall not affect the remaining
16 provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the
17 Town of Southern Shores, North Carolina which shall remain in full force and effect.

18
19 **ARTICLE V. Effective Date.**

20
21 This ordinance amendment shall be in full force and effect from and after the ____ day of
22 _____, 2020.

23
24
25 _____
Tom Bennett, Mayor

26 ATTEST:

27
28 _____
29 Town Clerk

30
31
32 APPROVED AS TO FORM:

33
34 _____
35 Town Attorney

36 Date adopted:

37
38 _____
39 Motion to adopt by Councilmember:

40
41 _____
42 Motion seconded by Councilmember:

43
44
45
46 Vote: ___AYES___NAYS



Agenda Item Summary Sheet

Date: August 18, 2020

Item #: 3F

Item Title: Interlocal Agreement Between the County of Dare and the Town of Southern Shores for Management of Funds from the Coronavirus Relief Fund (CRF) Established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act

Item Summary: North Carolina counties are receiving funding for local governments as part of the Coronavirus Relief Fund (CRF) established under the federal CARES Act. The Governor has signed HB 1023 which is the second part of the State C19 Relief Fund. It requires each County to give 25% of the grand total of the money associated with part 1 and part 2 of the fund to towns. The County determined the best way to distribute these funds to each town is by the same method that sales and occupancy taxes are distributed. The attached agreement with Dare County allocates \$37,088 to the Town.

Dare's part 1 = \$852,149

Dare's part 2 = \$718,269

Dare's total = \$1,570,418 - \$392,605 of that amount goes to the towns

When the legislature mandated the 25% municipal share, North Carolina Pandemic Recovery Office determined that the most efficient way to administer funds to the municipalities was to pass them through the counties, but municipalities are still required to report monthly to NCPRO and also to submit plans to NCPRO on how they intend to spend their CRF allocation. Counties were also required to submit spending plans. Municipal plans are due to NCPRO by Sept. 1st; municipalities that do not submit plans by Sept. 1st will lose their CRF funds. In that case, the county may keep the funds or reallocate them to another municipality.

Expenses incurred between March 1, 2020 and December 31, 2020 are eligible for reimbursement.

Staff Recommendation: Staff recommends the Council approve the attached Interlocal Agreement in order to receive CRF funds in the amount of \$37,088 to be put towards funding Coronavirus related expenses.

Requested Action: Approve a motion to approve the Interlocal Agreement Between the County of Dare and the Town of Southern Shores for Management of Funds from the Coronavirus Relief Fund (CRF) Established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. If the Council chooses not to enter the agreement, the funds will revert to the County.

Attachments:

Interlocal Agreement
House Bill 1023
FAQ of the Coronavirus Relief Fund

Interlocal Agreement Between the County of Dare
And the Town of Southern Shores
For Management of Funds from the Coronavirus Relief Fund (CRF)
Established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act

THIS INTERLOCAL AGREEMENT, made and entered into pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes this ____ day of ____ 2020, by and between the County of Dare, a body politic and corporate organized and existing under the laws of the state of North Carolina (hereinafter referred to as "County") and the Town of Southern Shores, a North Carolina Municipal Corporation organized and existing under the laws of the state of North Carolina (hereinafter referred to as "Municipality");

WHEREAS, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) established the Coronavirus Relief Fund (CRF); and

WHEREAS, the State of North Carolina received approximately \$4.067 billion in CRF funds, including approximately \$481,000,000, which the U.S. Treasury sent directly to four local governments in the State; and

WHEREAS, S.L. 2020-80 allocates \$300 million of the State of North Carolina's CRF allocation to counties ineligible to receive direct funding from the federal CRF; and

WHEREAS, S.L. 2020-80 directs the recipient County to allocate at least 25 percent of the funds for use by municipalities within the County for necessary expenditures incurred due to the public health emergency as required by section 601(d) of the Social Security Act, as amended by the CARES Act; and

WHEREAS, S.L. 2020-80 requires the recipient County to determine the total amount allocated to each municipality within the County, and requires each municipality that receives funds to develop a plan to spend the funds by September 1, 2020, or the County can use those funds or redistribute to other municipalities; and

WHEREAS, S.L. 2020-80 makes the CRF allocations subject to recoupment by the U.S. Treasury if they are not used in an eligible manner according to the most recently published U.S. Treasury Department guidance for CRF; and

WHEREAS, S.L. 2020-80 states counties and municipalities are liable to the State for any misuse or mishandling of the funds, and subject to clawback and other appropriate measures, including the reduction or elimination of other State Funds; and

WHEREAS, S.L. 2020-80 states any local government officer, official, or employee will be subject to a civil action by the State and held personally liable for reimbursement for violating the requirements of the CRF allocation; and

WHEREAS, S.L. 2020-80 and the North Carolina Pandemic Recovery Office have structured the administration of the CRF allocation to require the County to administer the allocation to municipalities and submit expenditure plans to the State; and

WHEREAS, the North Carolina Pandemic Recovery Office has advised that municipalities shall be directly liable to the State for violating the requirements of the CRF allocation; and

WHEREAS, the County's CRF allocation is \$1,570,418; and

WHEREAS, the Municipality's CRF allocation is \$37,088. [*This includes the amount of \$0, which was previously shared with the Municipality.*]

NOW, THEREFORE, it is agreed as follows:

1. Dare County shall allocate to the Municipality \$37,088 for expenditures as specified in the Municipality's plan, due Sept. 1, 2020. As stated in S.L. 2020-80, U.S. Treasury Guidance, and N.C. Pandemic Recovery Office guidance, the county is administering the local government CRF allocation. Counties and municipalities are liable to the State for any misuse or mishandling of the funds allocated to each entity, and subject to clawback and other appropriate measures, including the reduction or elimination of State Funds.
2. Municipality agrees to expend funds allocated pursuant to this Agreement in compliance with the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), S.L. 2020-80, U.S. Treasury Department Guidance, and NC Pandemic Recovery Office guidance. Any funds allocated by the County to the Municipality that are found to be expended in violation of all applicable laws and guidance shall be repaid by the Municipality to the State of North Carolina. The County assumes no liability for any violations of CRF expenditure requirements by the Municipality, its officers, agents, or employees, for funds allocated by the County to the Municipality and holds the County harmless from same. The Municipality shall maintain documentation of their expenditures to ensure compliance with reporting and auditing requirements.
3. In accordance with guidance from the U.S. Treasury Department, CRF payments are federal financial assistance subject to Single Audit requirements found in Uniform Guidance 2 CFR §200 Subpart F. CRF is a federal program with a CFDA No. 21.019. The U.S.

Treasury Department is the federal granting agency and, except for the four local governments that received CRF directly, the Office of State Management and Budget (OSBM) is the State pass-through entity. The Uniform Guidance CFR §200 Subparts B, C, D, and E do not apply, except for §200.303 and §§ 200.330 through 200.332.

4. In order to comply with State reporting requirements required pursuant to S.L. 2020-80, the Municipality shall submit its CRF Plan to the County by 8/24/2020. Municipality acknowledges that failure to submit its CRF Plan to the County by this date shall result in the loss of funding provided for in this Agreement. If the County has already transmitted funds to the Municipality and the Municipality fails to submit its CRF Plan to the County by the date provided for in this paragraph, the Municipality shall return the funds to the County.
5. In order to comply with monthly State reporting requirements on use of the funds, Municipality shall submit the required forms to the County by the 15th of each month for the County to upload to the State portal (Attachments C-1 and C-2). Following receipt of the monthly reports and substantiation for the amount requested for reimbursement, as required by OSBM, the County shall reimburse the Municipality for the funds expended. Municipality shall complete the July 20 report, for expenditures through June 30, as soon as possible.
6. A Final Report (Attachment F) will be required when the Municipality's allocation is fully spent or by November 20th, whichever is earlier. It is the County's intent to reallocate any unspent funds by December 1st to other eligible CRF expenses to fully utilize all CRF funds for the community.
7. Modifications to this Agreement shall be in writing, signed, duly executed by the parties hereto, and kept on file along with the original Agreement.
8. Any notice permitted or required under this Agreement from one party to the other must be in writing and will be effective (a) on the date it was actually delivered to the addressee if delivered personally, or sent by a nationally recognized courier (such as FedEx or United Parcel Service) or sent by facsimile, or (b) three days after having been deposited in the United States mail, if sent by certified mail, return receipt request, in each case to the respective addresses of Municipality and the County listed below, or those other addresses of which either party gives the other party written notice:

If to the Municipality, to: 5375 N. Virginia Dare Trail
Southern Shores, NC 27949

If to the County, to: P.O. Box 1000, Manteo, NC 27954

9. The parties agree that the terms and provisions of this Agreement shall be construed in accordance with the laws of the State of North Carolina. This Agreement contains the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this **INTERLOCAL AGREEMENT** to be duly executed pursuant to authorization obtained in a duly adopted resolution or has otherwise been duly authorized to sign on behalf of their respective corporation.

Town of Southern Shores

County of Dare

By _____

By _____

Title: _____

Title: _____

Municipality: This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

County: This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

**Town of Southern Shores
Budget Amendment Number # 10**

**Administration
Increases**

Decreases

<u>Account Number</u>	<u>Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Description</u>	<u>Amount</u>
	<u>Revenues</u>				
40-39934	CARES Act Grant	\$37,088			
	<u>Expenditures</u>				
42-50984	COVID Expenses	\$37,088			

Explanation: The amount of money the Town is due to receive from Dare County as part of the Coronavirus Relief Fund Grant

Recommended By:

Cliff Ogburn, Town Manager

Approved By:

Tom Bennett, Mayor

Date