



TOWN OF SOUTHERN SHORES

TOWN COUNCIL REGULAR MEETING

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

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

www.southernshores-nc.gov

PITTS CENTER

Tuesday, July 05, 2022 at 5:30 PM

MINUTES

Call Meeting to Order

Pledge of Allegiance
Moment of Silence

Present

Mayor Elizabeth Morey
Mayor pro tem Matt Neal
Council Member Leo Holland
Council Member Paula Sherlock

Absent

Council Member Mark Batenic

Amendments to / Approval of Agenda

Motion made by Council Member Holland to approve the agenda as presented, Seconded by Council Member Sherlock. The motion passed unanimously (4-0).

Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock

Consent Agenda

The consent agenda consisted of the following:

1. Pickups & Releases -Tax Dept.
2. Approval of Minutes- June 7, 2022 & June 21, 2022

Motion made by Council Member Sherlock to approve the consent agenda as presented, Seconded by Council Member Holland. The motion passed unanimously (4-0).

Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock

Staff Reports

Deputy Town Manager / Planning Director presented the June Permit Report. He further reported the

Planning Board will be meeting on July 18th at 5:00 p.m. Items of discussion will be ZTA 22-08 submitted by Casey Varnell and ZTA 22-07 submitted by the town to amend multiple articles in Chapter 36. The RFP for Land Use Plan update proposals are due July 22nd at 5:00 p.m.

Police Chief David Kole presented the month of July's Police Department report.

Fire Chief Ed Limbacher presented the month of July's Fire Department report.

Town Manager Cliff Ogburn provided a summary of operational highlights:

Traffic Update-the Town has made a strong effort to try and educate the public and tourist to stay on NC12 and 158 to avoid the congestion within the interior streets. The Mayor has created an educational video, met with the neighboring towns, the Tourist Bureau, and pleaded with property managers. He stated barricades this year have had a different effect than last year. While creating relief for some it has made worse problems and South Dogwood Trail is backed up to the cemetery. Public safety is an issue and suggested the barricades be removed until the volume of tourist traffic decreases to a manageable amount. The Town owns the streets but that makes them public streets, they are not private. Just by essence of the Town owning something, it's public not private. We have the authority to regulate but must do so uniformly.

2022 Street Improvement Project Update-last Thursday was the pre-construction meeting with Fred Smith Co. Once confirmed a graph with street schedule will be placed on the Town website. It will include what it entails and street segments.

Town Attorney Gallop had nothing to report but thanked Council for allowing him to serve as Town Attorney.

Mayor Morey stated it was a very busy weekend. What Council has been told by the Police Chief and Fire Chief is the more barricades that you put up on streets the more potential for public safety incidents. To reduce public safety incidents is one of the reasons to take some time off from the barricades. It has also created tension between the residents and the those driving through our town. The barricades may be good for some but bad for others, a similar pattern as last year. We are a unique town where people drive through our town to get to other destinations but also to destinations in Town, such as the country club, school, and church. The only good part is the heavy bumper to bumper traffic tends to be mostly Saturday afternoons. Mayor Morey further stated she is continuing to reach out to property management companies to stagger more check-in days.

Council Member Sherlock asked Town Manager Ogburn if the 4th of July weekend is typically the heaviest traffic weekend of the summer? Mr. Ogburn confirmed that was correct.

Council Member Sherlock stated Council was forwarded the emails received from residents about the weekend without barricades and it was a mix bag of response. Some residents applauded us for it, others felt it was the worst idea ever. She agreed with the mayor in where you live determines how you are affected and encouraged residents to email the Council or manager and let them know how it affects you.

Council Member Holland stated Hillcrest was hit heavy this past weekend. He is concerned with the incidents between residents and guests and residents with other residents.

Mayor pro tem Neal stated Saturday was horrendous for the northern streets and empathized with the residents on those streets. This past weekend there was 15,000 cars traveling, 5000 of them through Southern Shores streets. Physically trying to manage that level is not feasible.

Council Member Sherlock asked if RV's and boats with trailers could be prohibited on the streets. Town Manager Ogburn stated there can be a weight limit.

General Public Comment

None

Old Business

None

New Business

3. Consideration of Kimley Horn Contract- Trinitie/Juniper Culvert Bridge

Town Manager Ogburn presented the agenda item which read as, The Town Council has been discussing options for replacement of the culvert over Canvases Back Canal on Trinitite Trail.

Issues with the culvert date back to before 1994 when repairs were performed due to similar issues as today. Replacement of the culvert began in January 2012 and was completed in March 2012. Due to soil settling around the culvert, which created depressions in the road, repairs were performed in July 2012, January 2013, and October 2014.

A February 2017 inspection showed that the culvert itself had not appeared to have settled. However, since the original replacement and subsequent reinforcement of the culvert along with fill on both sides being re-packed and settled, the areas on both sides of the culvert continue to settle and produce impressions in the surface of the street on either side of the culvert. Several evaluations for structural integrity have been provided in recent years, most recently in February of 2022. The report concluded in part that it is extremely likely erosion/soil migration from under the roadbed as well as around the culvert walls of the canal below the water surface, and to some extent to the sides of the embankments, is occurring. This is to be expected given the inappropriate design evidenced by:

1. small vertical depth from top of culvert to road surface above and
2. relatively large vertical surface over which to distribute effectively and proportionately the tieback forces and
3. age of the culvert bridge.

The report further states that regardless of how well backfill is compacted, a certain amount is likely over time, especially with repeated vehicular loads. This is further impacted by organic materials like tree stumps and other vegetative organic matter involved in the process under the loaded vehicular area and slightly outside of the loaded vehicular area. Even properly compacted backfills can and do settle over time, more so with repeated loading. The unequally applied soil loads on the top and sides of the culvert are likely causing inward culvert wall movement and it's only natural to expect settlement in the locations where it is occurring.

Kimley-Horn was asked to prepare conceptual level structure plans for three different alternatives to replace the existing pipe culvert. The alternatives include a cast-in-place reinforced concrete slab bridge, a cored slab bridge, and a prefabricated buried arch structure.

The scope of services under this proposal include:

Task 1 Preliminary Hydraulic Study and Technical Memo - \$8,000

Task 2 Conceptual Roadway Design - \$10,000

Task 3 Conceptual Structural Plans - \$20,000

Task 4 Preliminary Utility Coordination - \$5,000

Total Lump Sum Labor Fee - \$43,000

In North Carolina, the procurement of professional services performed by architects, engineers, surveyors, and construction managers at risk is governed by G.S. 143-64.31, sometimes referred to as the "Mini-Brooks Act." Local government can exempt themselves from these requirements under G.S. 143-64.32 which reads "Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of proposed projects where an estimated professional fee is in an amount less than fifty thousand dollars (\$50,000)."

Rather than attempt to maintain what is in place now and experience continued settlement of the road, staff feels it is prudent to determine other, more effective, and lasting means for replacement. Staff recommends approval of the proposal as submitted so the Town Council can consider other options for replacement. It is further recommended that the Town exercise a "Mini-Brooks" exemption by approving the attached resolution.

Motion made by Council Member Sherlock to approve a budget amendment (funds from unassigned fund balance) not to exceed \$43,000 for Kimley-Horn to provide conceptual replacements for the Trinitie Trail Culvert, Seconded by Council Member Holland. The motion passed unanimously (4-0).

Motion made by mayor pro tem Neal to approve Resolution 2022-07-01 exempting the Town from the "Mini-Brooks Act" for the proposed work, Seconded by Council Member Holland. The motion passed unanimously (4-0).

Motion made by Council Member Holland to authorize the Town Manager to execute the attached agreement with Kimley-Horn to provide conceptual replacements for the Trinitie Trail Culvert, Seconded by Council Member Sherlock. The motion passed unanimously (4-0).

Mayor Morey asked Town Manager Ogburn if this big scope of work was typical and if bidders would use the conceptual proposals from Kimley Horn for bidding. Town Manager Ogburn confirmed the work is typical and yes it would be used for bidding the project.

General Public Comment

None

Council Business

Mayor Morey announced her Mayor's Chat scheduled for Wednesday, July 13th. The next Council meeting will be held August 2nd.

Mayor pro tem Neal and other members of Council thanked Town Attorney Gallop for his years of service to the Town.

Council Member Holland provided a Tourism Board report for the month of April. He stated occupancy was up 14%, 10% year to date. Meals were up 14%, 12% year to date. A Tourism Summit meeting will take place November 3, 2022, further details will follow soon.

Adjourn


By Consensus of all Council, the meeting was adjourned at 6:17 p.m.

ATTEST:


A. Elizabeth Morey, Mayor



Respectfully submitted,


Sheila Kane, Town Clerk

The attached documents are incorporated herewith and are hereby made a part of these minutes.

**TOWN OF SOUTHERN SHORES
TAX DEPARTMENT**

7/5/2022

PICKUPS

RELEASES

April Rreal

\$ 408.88

TOTAL

\$0.00

\$ 408.88



AGENDA ITEM SUMMARY # 3

MEETING DATE: July 5, 2022

ITEM TITLE: Consideration of Proposal for Trinitite Trail Culvert Replacement

ITEM SUMMARY: The Town Council has been discussing options for replacement of the culvert over Canvases Back Canal on Trinitite Trail.

Issues with the culvert date back to before 1994 when repairs were performed due to similar issues as today. Replacement of the culvert began in January 2012 and was completed in March 2012. Due to soil settling around the culvert, which created depressions in the road, repairs were performed in July 2012, January 2013, and October 2014.

A February 2017 inspection showed that the culvert itself had not appeared to have settled. However, since the original replacement and subsequent reinforcement of the culvert along with fill on both sides being re-packed and settled, the areas on both sides of the culvert continue to settle and produce impressions in the surface of the street on either side of the culvert.

Several evaluations for structural integrity have been provided in recent years, most recently in February of 2022. The report concluded in part that it is extremely likely erosion/soil migration from under the roadbed as well as around the culvert walls of the canal below the water surface, and to some extent to the sides of the embankments, is occurring. This is to be expected given the inappropriate design evidenced by:

1. small vertical depth from top of culvert to road surface above and
2. relatively large vertical surface over which to distribute effectively and proportionately the tieback forces and
3. age of the culvert bridge.

The report further states that regardless of how well backfill is compacted, a certain amount is likely over time, especially with repeated vehicular loads. This is further impacted by organic materials like tree stumps and other vegetative organic matter involved in the process under the loaded vehicular area and slightly outside of the loaded vehicular area. Even properly compacted backfills can and do settle over time, more so with repeated loading. The unequally applied soil loads on the top and sides of the culvert are likely causing inward culvert wall movement and it's only natural to expect settlement in the locations where it is occurring.

Kimley-Horn was asked to prepare conceptual level structure plans for three different alternatives to replace the existing pipe culvert. The alternatives include a cast-in-place reinforced concrete slab bridge, a cored slab bridge, and a prefabricated buried arch structure.

The scope of services under this proposal include:

Task 1 Preliminary Hydraulic Study and Technical Memo	-	\$8,000
Task 2 Conceptual Roadway Design	-	\$10,000
Task 3 Conceptual Structural Plans	-	\$20,000
Task 4 Preliminary Utility Coordination	-	\$5,000
 Total Lump Sum Labor Fee	-	 \$43,000

In North Carolina, the procurement of professional services performed by architects, engineers, surveyors, and construction managers at risk is governed by G.S. 143-64.31, sometimes referred to as the "Mini-Brooks Act." Local government can exempt themselves from these requirements under G.S. 143-64.32 which reads "Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of proposed projects where an estimated professional fee is in an amount less than fifty thousand dollars (\$50,000)."

STAFF RECOMMENDATION: Rather than attempt to maintain what is in place now and experience continued settlement of the road, staff feels it is prudent to determine other, more effective, and lasting means for replacement. Staff recommends approval of the proposal as submitted so the Town Council can consider other options for replacement. It is further recommended that the Town exercise a "Mini-Brooks" exemption by approving the attached resolution.

REQUESTED ACTION: A motion to approve Resolution 2022-07-01 exempting the Town from the "Mini-Brooks Act" for the proposed work and a motion to authorize the Town Manager to execute the attached agreement with Kimley-Horn to provide conceptual replacements for the Trinitie Trail Culvert.

ATTACHMENTS: June 20, 2022, Kimley-Horn "Conceptual Structure Replacement of Trinitie Trail Culvert Professional Services Agreement"

Resolution 2022-07-01

NCGS 143-64.31-32



June 20, 2022

Mr. David Bradley
Public Works Director – Town of Southern Shores, NC
5375 N. Virginia Dare Trail
Southern Shores, North Carolina 27949

Re: Conceptual Structure Replacement of Trinitie Trail Culvert
Professional Services Agreement

Dear Mr. Bradley

Kimley-Horn and Associates, Inc. (“Kimley-Horn”) is pleased to submit this letter agreement (the “Agreement”) to the Town of Southern Shores, NC (“Client”) to provide conceptual level plans concerning the replacement of the aluminum pipe culvert on Trinitie Trail in Southern Shores, North Carolina.

Project Understanding

Based on information (previous reports and email correspondence) provided by the Client, the aluminum pipe arch culvert over Canvas Back Canal on Trinitie Trail in Southern Shores, NC has experienced significant settlement on the sides of the culvert leading to an uneven roadway surface and ponding water during rain events on the roadway above.

The Client has requested that Kimley-Horn develop conceptual level structure plans for three (3) different structural alternatives to replace the existing pipe arch culvert. The alternatives to be provided include a cast-in-place reinforced concrete flat slab bridge, a cored slab bridge, and a prefabricated buried arch structure. For each of the alternatives, Kimley-Horn is assuming that Trinitie Trail road will be closed to traffic during construction and the structure will be replaced at the same location as the existing structure. In addition to the core disciplines (Roadway, Hydraulics & Hydrology, and Structure Design), Kimley-Horn will also identify any utility relocations/designs required based on utility crossings at the site of the current structure.

Kimley-Horn will prepare a conceptual level Opinion of Probable Construction Costs (OPCC) for each of the three (3) alternatives and provide them in a summary memo as a part of the overall conceptual design report including all other memos and plans as specified in the Scope of Services. Kimley-Horn has no control over the cost of labor, materials, equipment, or the Contractor’s means and methods of determining prices. Nor does Kimley-Horn have control over competitive bidding or market conditions. All opinions of probable construction costs are based on the information known to Kimley-Horn at the time provided and represent only Kimley-Horn’s judgement as a design professional familiar with the construction industry. Kimley-Horn cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from their Opinion of Probable Construction Costs.

To provide the best recommendations and to give the most accurate information, Kimley-Horn will conduct a site visit with three (3) members of the design team and the Client to better understand the site and to gather as much information as possible prior to working on the conceptual plans.

Kimley-Horn anticipates one (1) round of comments from the Client will be incorporated into the

conceptual level plans.

Based on feedback from the Client, Kimley-Horn will also send one (1) member of the design team to attend the Town Council meeting to speak to the findings of the Conceptual Level Design. This involvement will be to help facilitate a decision regarding structure type for replacement.

Scope of Services

Kimley-Horn will provide the services specifically set forth below.

Task 1 – Preliminary Hydraulic Study and Technical Memo

It is anticipated that the proposed bridge on Trinite Trail crossing Canvas Back Canal will encroach into the FEMA regulatory Zone AE for the Atlantic Ocean. Canvas Back Canal is not studied as a part of the Flood Insurance Study for Dare County, NC, Dated June 19, 2020 (FIS #37055CV000B). The creek and Trinite Trail crossing are located within an effective zone AE flood zone with an associated base flood elevation of 4.0 ft (NAVD). A hydraulic review will be completed to recommend a bridge option and final design approach that will meet local FEMA requirements. The hydraulic review will include the following steps:

- Review effective FEMA hydrologic and hydraulic data for Dare County and Canvas Back Canal
- Perform a field investigation and gather supplemental hydraulic survey if necessary
- Review conceptual bridge design layouts for hydraulic evaluation
 - Recommendations for bridge sizing will follow NCDOT design guidelines for local structures and local freeboard requirements
- Reach out by email to local floodplain manager to coordinate project requirements
- Results will be summarized in a technical memo. The technical memo will document the modeling process and results of the existing and proposed alternative analysis. It is assumed that the memo will document the required steps for local FEMA compliance.

Task 2 – Conceptual Roadway Design

Kimley-Horn will study the feasibility of three (3) structure alternatives. The study will consist of roadway centerlines, edges of pavement, guardrail, and pedestrian accommodations. Designs will be consistent with the applicable local and AASHTO standards. Project specific design items include the following:

- Roadway will be a curb and gutter facility

Kimley-Horn will prepare a feasibility level graphic for incorporation into structure plans. Kimley-Horn will provide Quality Control/Quality Assurance review prior to submittal. Engineer will submit electronic PDF copies of the plans to the Client.

Task 3 – Conceptual Structural Plans

Kimley-Horn will develop a set of conceptual level plans for three (3) structure alternatives along a single alignment at the location of the existing culvert. The three (3) structure alternatives to be presented in these conceptual plans include:

- Cast-in-place concrete flat slab bridge
- Prestressed concrete cored slab bridge
- Contech prefabricated arch

These conceptual level plans will show preliminary details intended to help the Client with selecting the preferred structure type. Kimley-Horn will also provide an Opinion of Probable Construction Cost (OPCC) for each alternative to better illustrate each structure alternative. These plans will include the following details:

- Plan view of each proposed structure alternative, which will show the proposed structure limits and span length
- Proposed bridge/structure typical sections

Kimley-Horn has assumed that current NCDOT Standards and Specifications and AASHTO LRFD Bridge Design Specifications will be used to design and layout the alternatives.

Task 4 – Preliminary Utility Coordination and Summary Memo

All existing utilities in the project area are underground. Based on the depth of the existing culvert and the minimal cover to the existing roadway surface, it is anticipated that the existing underground utilities will require relocation, if the existing culvert is replaced with a bridge.

Kimley-Horn will work to identify utility owners in the area based on NC811 inquiry and field observations. Kimley-Horn will perform one (1) site visit to make visual observations and to discuss existing conditions and proposed bridge criteria with the Client.

Kimley-Horn will coordinate with identified utility owners to determine if relocation is likely to be necessary and if so, to obtain budgetary costs for relocation. Proposed bridge type is not anticipated to substantially affect utility relocation extents or costs.

It is anticipated that the following underground utilities may be present in the project area. Other utilities may also be present.

- Dare County Water Department – Potable Water
- Dominion Energy – Electric
- Charter/Spectrum – Telecommunications
- CenturyLink – Telecommunications

Kimley-Horn will provide summary of identified existing utilities and budgetary relocation costs within a utility relocation summary memo.

Services Not Included

Any other services, including but not limited to the following, are not included in this Agreement:

- Geotechnical Investigation and Recommendations
- Survey and subsurface utility investigations

These services and more can be provided in a Final Design task order once a structure alternative has been selected.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Preliminary environmental investigation
- Shoreline and streambank evaluation and flagging
- Environmental permitting requirements and timing
- Preliminary Jurisdictional Determination (PreJD)
- Riparian Buffer Determination
- Agency Verification Documents
- Significant modification or redesign based on agency comments
- Preparation or submittal of Section 404/401 Permit requests
- Preparation or submittal of Riparian Buffer Authorization (Final design)
- Protected species surveys
- Section 7 Consultation with the USFWS
- On-site mitigation design
- Phase I or Phase II archaeological investigations / historic preservation
- Investigations regarding hazardous materials, waste, or contamination
- Groundwater studies or analysis
- Final hydraulic analysis
- Final roadway design
- Final Utility Coordination
- Wet Utility Final Certification(s) and Record Drawings
- Final Structural design and drawings for Construction
- Structural calculations and specifications
- Bid phase services
- Construction phase services

Information Provided By Client

None at this time. Kimley-Horn will use the information previously provided by the Client to aid in our conceptual level plans and to help guide our recommendations.

Schedule

Upon receiving Notice to Proceed from the Client, Kimley-Horn will schedule a site visit for the design team and members from the Town of Southern Shores to view and photograph the site as needed to begin the conceptual design and plans. Following the site visit, Kimley-Horn will work with the Client

to develop a mutually agreed to schedule.

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 – 4 for the total lump sum labor fee below. Individual task amounts are informational only. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, travel, and other direct expenses will be billed at 1.15 times cost.

Task 1 Preliminary Hydraulic Study and Technical Memo	\$8,000
Task 2 Conceptual Roadway Design	\$10,000
Task 3 Conceptual Structural Plans	\$20,000
Task 4 Preliminary Utility Coordination	\$5,000
Total Lump Sum Labor Fee	\$43,000

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Reimbursable expenses will be invoiced based upon expenses incurred. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the Town of Southern Shores.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submit invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

_____ Please email all invoices to _____

_____ Please copy _____

If you want us to proceed with the services, please have an authorized person sign this Agreement below and return to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



Seth A. Denney, P.E.

Assistant Secretary



Andrew L. Phillips, P.E.

Project Manager



Town of Southern Shores

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachment – Request for Information
Attachment – Standard Provisions

Request for Information

Please return this information with your signed contract; failure to provide this information could result in delay in starting your project

Client Identification

Full, Legal Name of Client					
Mailing Address for Invoices					
Contact for Billing Inquiries					
Contact's Phone and e-mail					
Client is (check one)	Owner	<input type="checkbox"/>	Agent for Owner	<input type="checkbox"/>	Unrelated to Owner

Property Identification

	Parcel 1	Parcel 2	Parcel 3	Parcel 4
Street Address				
County in which Property is Located				
Tax Assessor's Number(s)				

Property Owner Identification

	Owner 1	Owner 2	Owner 3	Owner 4
Owner(s) Name				
Owner(s) Mailing Address				
Owner's Phone No.				
Owner of Which Parcel #?				

Project Funding Identification – List Funding Sources for the Project

Attach additional sheets if there are more than 4 parcels or more than 4 owners

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

- 1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
 - d. Arrange for access to the site and other property as required for the Consultant to provide its services.
 - e. Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Consultant as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
 - c. If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - d. If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - e. The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.
- 5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an

electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

- 6) **Intellectual Property.** Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Consultant and its affiliates.
- 7) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify the Consultant.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

- 15) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
- a. If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.
 - b. The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - c. The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. If Client requires Consultant to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Consultant or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.



Town of Southern Shores

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RESOLUTION 2022-07-01

RESOLUTION EXEMPTING SOUTHERN SHORES CONCEPTUAL STRUCTURE REPLACEMENT OF TRINITIE TRAIL CULVERT WITH KIMLEY HORN FROM G.S. 143-64.31

WHEREAS, G.S. 143-64.31 requires the initial solicitation and evaluation of firms to perform architectural, engineering, surveying, construction management-at-risk services, and design-build services (collectively “design services”) to be based on qualification and without regard to fee;

WHEREAS, the Town proposes to enter in a contract for design services for work on potential structure replacements for the Trinitie Trail Culvert; and

WHEREAS, G.S. 143-64.32 authorizes units of local government to exempt contract for design services from the qualifications-based selection requirements of G.S. 143-64.31 if the estimated fee is less than \$50,000; and

WHEREAS, the estimated fee for design services for the above-described project is less than \$50,000.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES RESOLVES:

Section 1. The above-described project is hereby made exempt from the provisions of G.S. 143-64.31

Section 2. This resolution shall be effective this 5th day of July 2022.

ATTEST

Elizabeth Morey, Mayor

Sheila Kane, Town Clerk

Article 3D.

Procurement of Architectural, Engineering, and Surveying Services.

§ 143-64.31. Declaration of public policy.

(a) It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural, engineering, surveying, construction management at risk services, design-build services, and public-private partnership construction services to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm. If a contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm. Selection of a firm under this Article shall include the use of good faith efforts by the public entity to notify minority firms of the opportunity to submit qualifications for consideration by the public entity.

(a1) A resident firm providing architectural, engineering, surveying, construction management at risk services, design-build services, or public-private partnership construction services shall be granted a preference over a nonresident firm, in the same manner, on the same basis, and to the extent that a preference is granted in awarding contracts for these services by the other state to its resident firms over firms resident in the State of North Carolina. For purposes of this section, a resident firm is a firm that has paid unemployment taxes or income taxes in North Carolina and whose principal place of business is located in this State.

(b) Recodified as G.S. 143-133.1(a) by Session Laws 2014-42, s. 3, effective October 1, 2014, and applicable to contracts awarded on or after that date.

(c) Recodified as G.S. 143-133.1(b) by Session Laws 2014-42, s. 3, effective October 1, 2014, and applicable to contracts awarded on or after that date.

(d) Recodified as G.S. 143-133.1(c) by Session Laws 2014-42, s. 3, effective October 1, 2014, and applicable to contracts awarded on or after that date.

(e) For purposes of this Article, the definition in G.S. 143-128.1B and G.S. 143-128.1C shall apply.

(f) Except as provided in this subsection, no work product or design may be solicited, submitted, or considered as part of the selection process under this Article; and no costs or fees, other than unit price information, may be solicited, submitted, or considered as part of the selection process under this Article. Examples of prior completed work may be solicited, submitted, and considered when determining demonstrated competence and qualification of professional services; and discussion of concepts or approaches to the project, including impact on project schedules, is

encouraged. (1987, c. 102, s. 1; 1989, c. 230, s. 2; 2001-496, s. 1; 2006-210, s. 1; 2013-401, s. 1; 2014-42, ss. 3, 4.)

§ 143-64.32. Written exemption of particular contracts.

Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of proposed projects where an estimated professional fee is in an amount less than fifty thousand dollars (\$50,000). (1987, c. 102, s. 2; 2013-401, s. 2.)