



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, March 07, 2023 at 5:30 PM

AGENDA

Call Meeting to Order

Pledge of Allegiance

Moment of Silence

Amendments to / Approval of Agenda

Consent Agenda

1. Minute Approval-emailed
2. Government & Education Access Channel 2023-2024 Proposed Budget
3. Surplus Resolution-2016 Ford Explorer
4. Resolution Requesting the NCGA to Revise and Expand the Good Samaritan Law GS 90-96.2

Presentations

5. Presentation -Marine Corp League

Staff Reports

Deputy Town Manager/Planning Director

Monthly Permit Reports

Planning Board Update

Police Chief

Fire Chief

Town Manager

Town Attorney

General Public Comment (Limit: 3 minutes per speaker.)

Old Business

New Business

6. Request For Proposal for Audit Services
7. Discussion/Consideration of Contributions -Wall of Healing & KHES "Everyone's Playground"
8. Consideration of Permitting & Design Contract with Kimley Horn for Juniper /Trinitie Bridge Replacement

General Public Comment (Limit: 3 minutes per speaker.)

Council Business

Closed Session-Pursuant to N.C.G.S. § 143-318.11(a)(5) and N.C.G.S. § 143-318.11(a)(3)

Adjourn

Government Education Access Channels Committee
2023-2024 Proposed Budget

The following items are presented to the **Southern Shores Town Council** for their review and approval.

Specific Action Requested:

Approve the proposed 2023-2024 Budget

Budget Summary

The Government Education Access Channels (GEAC) Committee has reviewed and approved the proposed 2023-2024 budget for the operation of the Government and Education Channels. The proposed budget, which would take effect July 1, 2023, must be approved by every participating member entity of the Channels, which includes the towns of Duck, Southern Shores, Kitty Hawk, Kill Devil Hills, Nags Head, Manteo, and Dare County, Dare County Schools, College of The Albemarle, and UNC Coastal Studies Institute.

The budget as proposed requires no additional funding from the participating entities above the current annual \$1000 membership fee. The budget is funded primarily from the North Carolina Video Distribution proceeds, which are disbursed quarterly by the State to certified channels throughout the state. These funds must be used for the operations of the two channels and no other purpose. Additionally, the legislation that originally established the Video Distribution funding required that the proceeds not supplant current funding. Accordingly, the annual \$1000 membership fee that was in place when the program began must remain, or the Channels would lose all Video Distribution funding from the State.

The GEAC committee recommends the attached budget, which includes, in part, the following: continued funding for two full-time staff positions and the Local Programming Development Initiative to assist members in the development of programming for the Government and Education Channels. The funding also includes the continued funding of two regular news magazine shows that highlight each of the participating members on the Education Channel and the Government Channel.

INCOME	CURRENT 2022-2023	PROPOSED 2023-2024
NC PEG Supplemental Video Disbursement (from the state NCDOR) ¹	255,000.00	247,000.00
Member Fees (annual fee paid by participating entities) ²	10,000.00	10,000.00
Interest Income (interest from fund balance)	1,000.00	5,000.00
TOTAL INCOME	266,000.00	262,000
APPROPRIATED FUND BALANCE³	54,920.00	63,626.00
TOTAL REVENUE	320,920.00	325,626.00
EXPENDITURES		
Salaries (2 Full time employees) ⁴	(116,404.00)	(128,422.00)
Merit Pay ⁵	(2,255.00)	(2,568.00)
FICA	(8,904.00)	(9,825.00)
Retirement	(14,562.00)	(16,579.00)
Health Insurance ⁶	(41,256.00)	(37,781.00)
Life Insurance	(210.00)	(210.00)
Retiree Health	(204.00)	(231.00)
Contractual Services (Production of Destination Dare/Ed Awareness) ⁷	(34,000.00)	(40,000.00)
Professional Services ⁸	(2,000.00)	(2,000.00)
Equipment - Repair, Replacement, Purchase ⁹	(12,000.00)	(5,000.00)
Supplies ¹⁰	(2,000.00)	(3,500.00)
Music Library	(350.00)	(350.00)
Training	(1,000.00)	(1,000.00)
Travel	(1,000.00)	(1,000.00)
Professional Memberships	(500.00)	(500.00)
Channel Operations ¹¹	(7,600.00)	(11285.00)
Marketing	(1,000.00)	(1,000.00)
Miscellaneous	(500.00)	(500.00)
Capital Outlay	(0.00)	(0.00)
Contingency (Reserve for unexpected expenses)	(15,000.00)	(5,000.00)

Emergency Contingency (Storm related overtime during activations)	(2,500.00)	(2,500.00)
Vehicle Maintenance	(1,000.00)	(1,000.00)
Vehicle Fuel	(2,000.00)	(2,000.00)
Insurance and Bonds	(3,425.00)	(2,975.00)
Uniforms	(500.00)	(400.00)
Verizon Wireless ¹²	(750.00)	(750.00)
TOTAL OPERATING EXPENDITURES	-270,920.00	-275,626.00
Local Program Development Initiative		
<p>This is money set aside in the budget to foster development of program content by the member entities. Money is awarded on an application and grant basis to participating entities by the Government and Education Access Channel Committee. The money can be used to produce programs, improve the quality of existing programs, or purchase equipment to provide for increased production and/or quality of programs.</p>		
LPDI 1 - Coastal Studies Institute	(5,000.00)	(5,000.00)
LPDI 2 - College of The Albemarle	(5,000.00)	(5,000.00)
LPDI 3 - Dare County Government	(5,000.00)	(5,000.00)
LPDI 4 - Dare County Schools	(5,000.00)	(5,000.00)
LPDI 5 - Duck	(5,000.00)	(5,000.00)
LPDI 6 - Kill Devil Hills	(5,000.00)	(5,000.00)
LPDI 7 - Kitty Hawk	(5,000.00)	(5,000.00)
LPDI 8 - Manteo	(5,000.00)	(5,000.00)
LPDI 9 - Nags Head	(5,000.00)	(5,000.00)
LPDI 10 - Southern Shores	(5,000.00)	(5,000.00)
TOTAL LPDI	(50,000.00)	(50,000.00)
TOTAL LPDI AND OPERATING EXPENDITURES	-320,920.00	-325,626.00

Continue to footnotes on next page.

**Government and Education Access Channel
Draft Budget Notes for 2021-2022**

Goals and Objectives to be achieved with this budget.

1. Continue to fund the operation of the channel at a level that provides a professional, reliable and quality service to the citizens of Dare County.

¹ **NC PEG Supplemental Video Disbursement** - this is revenue that is collected by the state in the form of a use tax on cable and satellite providers. The money is pooled and disbursed to qualifying PEG operations within the state. PEG stands for Public, Education, and Government Access. Dare County has 10 qualifying PEG entities, each is a member of the Government and Education Access Channel Committee. Each quarter, this money is disbursed to the entities by the state, and then the Government and Education Access Channels invoices the entities for this money. These state funds are the main source of funding for the Government and Education Access Channels. There has been a slight decrease in NC PEG revenue disbursements so the budget has been adjusted accordingly.

² **Member Fees** - Each entity member pays an annual membership fee to participate in the Government and Education Channel Access. This money must remain in place in order for each entity to receive the PEG Supplement from the state. There is no change to this amount from last year, so impact on each entity's budget is unchanged.

³ **Appropriated Fund Balance** -The appropriated fund balance is the amount pulled from the unappropriated fund balance to meet the obligations of the budget. The unappropriated fund balance is currently \$319,229.23 and with the appropriation for the current fiscal year (\$54,920.00) subtracted, the total is anticipated to be \$264,309.23 on June 30, 2023.

⁴ **Salaries** - This budget currently funds two full-time positions that are Dare County employees, and includes a 2.5% COLA increase as recommended by Dare County Finance for planning purposes.

⁵ **Merit Pay** - awarded on performance. Dare County Finance has advised that \$2,568 be included for FY 2024.

⁶ **Health Insurance** - Includes health insurance coverage for both employees.

⁷ **Contractual Services** - This is for the production of Destination Dare and Dare Education Awareness, our two main programming initiatives that highlight interesting aspects of government and education in Dare County. Each entity contributes one segment to each episode. Destination Dare is produced every other month, and Dare Education Awareness is produced in the alternate months. Last year, we deducted \$6000 from this line item in an effort

to reduce the amount of contracted hours. However, rates have increased this year, which brings this line item back up to \$40,000.

⁸ **Professional Services** - Item to pay for costs associated with professional services such as professional voiceover work, acting, and potential production support.

⁹ **Equipment** - Monies set aside for the purchase and repair of large item video production equipment, such as cameras, editing computers, and lighting equipment.

¹⁰ **Supplies** - This supports the purchase of supplies such as batteries, gaffers tape, lighting gels, accessories, and small equipment items that do not qualify as Capital Outlay or Equipment.

¹¹ **Channel Operations** - Expenses that support the day to day operation of the channels. This includes:

- \$4,200.00 - OBX Media: for website hosting and maintenance
- \$2,400.00 - Reflect: Streaming Video/VOD for online video streaming service
- \$3,700.00 - Cablecast: Closed captioning service (500 hours)
- \$600.00 - Adobe: Creative Cloud subscription for professional non-linear editing tools
- \$385.00 - Storyblocks: Digital asset and stock footage library

¹² **Verizon Wireless** - Line item dedicated to Verizon Wireless fee for use in mobile live broadcasting with Cradlepoint device.



Town of Southern Shores

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Item 3.

A RESOLUTION DECLARING CERTAIN PROPERTY OF THE TOWN TO BE SURPLUS AND AUTHORIZING THE DISPOSITION OF SAID PROPERTY

#2023.03.01

WHEREAS, the Town Council of the Town of Southern Shores, North Carolina, has determined that the Town owns certain personal property that is no longer needed or usable by the Town; and

WHEREAS, the property is described below:

Surplus Property Information

Make	Model	Year	Department	V.I.N. / Description	Surplus
Ford	Explorer	2016	Police	1FM5K8AR4GGA86860	Gov-Deals

NOW, THEREFORE, BE IT RESOLVED by the Southern Shores Town Council that the Town Manager or his designee are hereby authorized to dispose of the aforementioned property by any means allowable to include offering for sale at public auction, donation to a nonprofit organization, internet on-line offering, private negotiation and sale, upset bid process, or destruction.

AND BE IT FURTHER RESOLVED that property described in this resolution is surplus as of March 7, 2023.

ATTEST:

Elizabeth Morey, Mayor

Sheila Kane, Deputy Clerk



**Resolution Requesting the NCGA to
Revise and Expand the Good Samaritan Law GS 90-96.2
Resolution # 2023.03.02**

WHEREAS, the North Carolina General Assembly adopted GS 90-96.2, also known as the Good Samaritan Law in 2013; and

WHEREAS, the North Carolina General Assembly Good Samaritan Law was recognized as both timely and one of the best in the Nation; and

WHEREAS, as a result of this law, a number of lives in North Carolina have been saved, specifically from opioid overdose and fear of prosecution; and

WHEREAS, people are still too often deterred from calling for help at the scene of an overdose if they fear arrest and prosecution, which undermines the very purpose of the law; and

WHEREAS, continually rising overdose fatalities show that North Carolina’s current Good Samaritan Law fails to provide adequate protections to ensure individuals feel safe and willing to call 911; and

WHEREAS, since the passage of the Good Samaritan Law in 2013, several new substances have become threats to the lives of our citizens; and

WHEREAS, these new substances are not specifically designated and are therefore not covered by the current law, resulting in unnecessary and tragic deaths; and

WHEREAS, while the current Good Samaritan Law has helped save lives in the past, it is apparent that the law needs to be revised and expanded to include a wider range of threats to our citizenry.

THEREFORE, BE IT RESOLVED, that the Southern Shores Town Council requests the North Carolina General Assembly to urgently consider revising and expanding the Good Samaritan Law to include a broader spectrum of substance-related threats to our citizenry as a matter of public safety; and

BE IT FURTHER RESOLVED, that the Southern Shores Town Council believes that this action will ultimately save people who will have the chance to recover and go on to have meaningful and productive lives in our communities.

This the 7th day of March 2023.

A. Elizabeth Morey, Mayor

Attest:

Sheila Kane, Town Clerk



AGENDA ITEM SUMMARY

MEETING DATE: March 7, 2023

ITEM TITLE: Request For Proposal for Audit Services

ITEM SUMMARY:

The Town solicited proposals from qualified auditors for the Town's annual independent audit for fiscal years 2023, 2024 and 2025. The Town's most recent auditor, Teresa Osborne of Dowdy & Osborne, LLP, has retired from providing audit services after 19 years as the Town's auditor. The Town received (6) proposals from the following firms:

1. Potter and Company PA
Monroe, NC (additional offices in Concord and Mooresville, NC)
2. Johnson Mizelle Straub & Murphy LLP
Kitty Hawk, NC
3. Sharpe Patel CPA
Raleigh, NC (additional office in Charlotte, NC)
4. Thompson, Price, Scott, Adams & Co. PA
Wilmington, NC (other offices throughout NC)
5. Carr, Riggs & Ingram CPA's
New Bern, NC
6. Robinson, Farmer, Cox Associates
North Chesterfield, VA

Due to State and/or Federal grants exceeding \$ 750,000 the Town will be receiving a Single Audit for fiscal year 2023. The Single Audit includes both an audit of the financial statements and the Federal and State awards and ensures the Town followed the compliance requirements for the grant awards. We currently anticipate going back to a Yellow Book audit in subsequent fiscal years which is the more typical audit for the Town.

Bonnie Swain and Teresa Osborne reviewed the 6 proposals and rated the proposals on the following criteria:

1. Approach to audit quality
2. Team knowledge and experience
3. Unique qualifications
4. Scope and pricing of engagement

While pricing is a factor, it is important to staff to have an auditor that is committed to performing a substantial part of the fieldwork on site for better communication and to help build a better working relationship. Based on all factors evaluated the recommendation is to award the audit contract for three years to Carr, Riggs & Ingram CPA's for a price contract of \$ 24,000 (\$2,500 additional due to single audit requirement) for fiscal year 2023, \$22,600 for FY 2024 and \$23,800 for FY 2025. The price will be an additional \$2,500 when a single audit is required.

STAFF RECOMMENDATION: Based on all factors evaluated the recommendation is to award the audit contract for three years to Carr, Riggs & Ingram CPA's

REQUESTED ACTION: Motion to award a three-year contract for audit services to Carr, Riggs & Ingram CPA's for a price contract of \$24,000 for FY2023, \$22,600 for FY 2024 and \$23,800 for FY 2025, plus an additional \$2,500 when a single audit is required.



AGENDA ITEM SUMMARY: Item #8

MEETING DATE: March 7, 2023

ITEM TITLE: Consideration of Permitting & Design Contract with Kimley Horn Juniper/Trinitie Bridge Replacement

ITEM SUMMARY: At the February 7, 2023 Town Council Meeting, staff requested additional time be given for consideration of lowering the height of the cored slab bridge, which is the chosen alternative for replacing the culvert. Any individual, partnership, corporation, or local, state, or federal legislative body, agency, or authority planning to construct or modify a bridge or causeway across a navigable waterway of the United States must apply for a Coast Guard bridge permit. According to the Chief of the Bridge Branch Fifth Coast Guard District, "given the apparent nature of the waterway and navigation on the waterway, it seems prudent to conduct a Coast Guard bridge permit determination (to determine whether an exception from requiring a Coast Guard permit may apply)." Staff has submitted the requested Bridge Project Questionnaire for the Coast Guard's use in making a bridge permit determination.

After following the process for selection of an engineering firm, Kimley Horn was selected to permit and design the culvert replacement project. Town staff request Kimley Horn to provide the Town with a Professional Services Agreement for tasks that could be performed while the USCG makes their determination on permitting requirements. Task Order #1 includes:

- Task 1 – Environmental \$86,070
- Task 2 – Geotechnical Engineering Services \$31,820
- Task 3 – Topographic Survey \$40,830
- Task 4 – SUE Investigation \$8,800
- Task 5 – Document Review & Coordination \$9,260

Total Lump Sum Labor Fee for Task Order #1 \$176,780



February 28, 2023

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

Re: Structure Replacement of Trinitie Trail Culvert
Professional Services Agreement – Task Order #1

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 (“Client” or “Town”) to provide construction documents concerning the replacement of the aluminum pipe culvert on Trinitie Trail in Southern Shores, North Carolina.

Project Understanding

Based on information (Request for Proposals, conceptual design plans, and additional 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. Additionally, the current vertical grade of the roadway does not meet current design code for safe stopping sight distance, leading to an unsafe “blind” crest going over the structure.

The Client has requested that Kimley-Horn develop construction documents for the selected alternative to replace the existing pipe arch culvert. The selected alternative is a cored slab bridge and will require that Trinitie Trail Road be closed to traffic during construction as the proposed structure will replace the existing structure at its current location. In an effort to minimize the project's impacts to the surrounding natural landscape and trees, Kimley-Horn will work with the Client to evaluate reasonable options to mitigate these impacts.

Kimley-Horn understands that the Client intends to provide the necessary reviews throughout the design process and that the plans and specifications are to meet NCDOT standard. It has been understood that no federal or state money will be used for design or construction, therefore the design/permitting will be performed to meet the criteria as required for projects not receiving any federal or state funding, as indicated below.

At this time, it is understood that the Town would like Kimley-Horn to only proceed with the Tasks/Disciplines that will not be impacted as a result of the continued coordination between the Town of Southern Shores and the Coast Guard regarding the Town's request to get Coast Guard permission to lower the existing structure opening. This coordination will continue and all Tasks/Disciplines that are subject to change as a result of this coordination will be held off until a later date and will be contracted as Task Order #2. It is called to the Town's attention that the previously submitted scope and fee are subject to revision prior to commencing Task Order #2, as described in Kimley-Horn's Standard Letter Agreement (see attachment after Scope and Fee descriptions).

Scope of Services – Task Order #1

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

Task 1 – Environmental

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

Task 1.1 – Stream, Wetland, and Coastal Resource Delineation

Kimley-Horn will conduct a field investigation of the Site to determine the absence or presence of streams, wetlands, and/or open waters within the project utilizing the three-parameter approach for wetland delineation as described in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands. Potentially jurisdictional features will be assessed and verified in the field using the guidelines presented in the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual and the 2010 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Version 2.0). Data forms required for certification by the U.S. Army Corps of Engineers (USACE) and/or the North Carolina Division of Water Resources (NCDWR) will be completed with the data necessary obtained during field investigations. Any jurisdictional streams will be classified as either perennial or intermittent and will be documented per NCDWR stream classification protocol. The delineated wetland and stream boundaries will be flagged GPS located with a handheld GPS unit, as necessary. The field investigation will also identify features likely to be subject to regulation by NC Division of Coastal Management (NCDWM) as coastal wetlands and/or coastal Areas of Environmental Concern (AECs) within the project.

Task 1.2 – USACE, NCDWR, and NCDWM Agency Verifications

Kimley-Horn anticipates that a Preliminary Jurisdictional Determination (JD) will be required to meet the Client's objectives for the project. Kimley-Horn will prepare a Preliminary JD request package for submittal to the USACE, the NCDWR, and the NCDWM. Kimley-Horn will seek to obtain concurrence from the USACE and/or the NCDWR on the streams, wetlands, and/or open waters identified during the delineation within the project, as well as the limits of identified coastal zone resources, coastal wetlands, and AECs regulated by the NCDWM within the project. The JD request package will consist of a cover letter, the JD request forms, required figures, and supporting data forms. It is anticipated that one (1) site inspection will be required with the USACE, the NCDWR, and/or the NCDWM where Kimley-Horn will review the final delineation in the field with applicable agency representatives. Kimley-Horn will perform any minor modifications to the jurisdictional feature boundaries that may be deemed necessary by the USACE, NCDWR, and NCDWM in order to obtain concurrence.

Task 1.3 – Preliminary Environmental Assessment

Following the field investigation mentioned in Tasks 1.1 & 1.2, Kimley-Horn will provide the Client with a preliminary constraints figure showing the findings, including the applicable stream origins, coastal resources, AECs, and other critical points in the project, along with a brief email summarizing the identified constraints.

Task 1.4 – Section 404/401 Permit

Due to the proposed span over Canvas Back Canal, an NCDWM-jurisdictional coastal zone resource, and the project's location within one of the 20 coastal counties of North Carolina, it is anticipated that a Coastal Area Management Act (CAMA) permit will be required as part of the project development. Based on the need for a CAMA permit, it is assumed that the project will qualify for authorization under Regional General Permit (RGP) 198000291 (RGP 291) from the USACE and the associated Section

401 Water Quality Certification (WQC) from the NCDWR which covers CAMA-permitted activities in Waters of the US. Kimley-Horn will conduct one pre-application meeting with the USACE, NCDWR, and NCDCM to present the permit approach, avoidance/minimization measures, and alternatives analysis. This will include working with the agencies to determine whether mitigation will be required for the project, and if so, the type and amount necessary. It is assumed that the pre-application meeting will satisfy the Pre-Filing Notification required by the NCDWR and NCDCM. Kimley-Horn will calculate impacts and prepare a draft 404/401 Permit application package for Client review. Kimley-Horn will revise the application package based on Client comments and submit the final 404/401 Permit application package to the USACE and the NCDWR. Should mitigation be required by the agencies for stream and/or wetland impacts resulting from the project, Kimley-Horn will coordinate with private mitigation banks or the North Carolina Division of Mitigation Services (DMS) In-Lieu Fee Program to reserve mitigation credits for the project. On-site mitigation design services are not included in this scope of services but can be provided as an additional service if required.

If the regulatory agencies determine that the project does not qualify for authorization under RGP 291 or another applicable RGP or Nationwide Permit and an Individual Section 404/401 Permit is required, these efforts will be considered as an additional service. Upon submittal, Kimley-Horn will track the application through the regulatory review process. This will include addressing up to one (1) additional information request made by the permitting agencies.

Task 1.5 – CAMA Major Permit

It is anticipated that a CAMA Major Permit will be required by the NCDCM due to anticipated impacts to Areas of Environmental Concern (AECs) within the project. Kimley-Horn will prepare the draft CAMA Major Permit application package for client review including a cover letter, the NCDCM application forms, required figures, and workplan drawings. Kimley-Horn will also prepare the required adjacent landowner notification packages as required by NCDCM and send via Certified Mail to the adjacent landowners to the project along Canvas Back Canal. Kimley-Horn will revise the application package based on Client comments and submit the final CAMA Major Permit application package to the NCDCM. This task includes preparation of the 16 physical copies of the application package required by NCDCM and up to 6 physical copies for the adjacent landowners. Upon submittal, Kimley-Horn will track the application through the regulatory review process, which will include addressing up to one (1) additional information request made by the NCDCM.

Task 1.6 – US Coast Guard Advance Approval Permit Exemption and Bridge Lighting Exemption

Kimley-Horn's understands that the objective of the bridge replacement project design will be to maintain both the vertical and horizontal navigational clearances, with no modification to either dimension. Based on that assumption, it is anticipated that the project will qualify for an Advance Approval Permit Exemption from the US Coast Guard (USCG) and that a full Bridge Permit will not be required. If the USCG determines that the project does not qualify for authorization under the Advance Approval Permit Exemption and a full Bridge Permit and/or Navigation Impact Report (NIR) is required, these efforts will be considered as an additional service. Kimley-Horn will prepare the Advance Approval Permit Exemption request for client review including a cover letter, the USCG application form, supporting figures, and plan sheets. The package will also include a request for a Bridge Lighting Exemption if the Client chooses to not light the replacement structure. Kimley-Horn will revise the application package based on Client comments and submit the final package to USCG for review.

Kimley-Horn will track the application package through the review with the USCG and address up to 1 additional information request from USCG.

Task 1.7 – Permitting Coordination with Agencies

Due to the type and quantity of sensitive, protected, and regulated natural and aquatic resources in the project area, extensive coordination with multiple environmental regulatory agencies is anticipated for this project. Various meetings, conference calls, and coordination efforts with the Town, Kimley-Horn, and regulatory agencies are anticipated to be necessary to advance the reviews of verification packages, permit applications, and streamline deliverable reviews. This task includes 40 hours of effort by the Kimley-Horn project team to provide the necessary additional coordination and support to help advance the project review before, during, and after package submittals to the applicable agencies.

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:

- Protected Species surveys or coordination
- On-site mitigation design
- Investigations regarding hazardous materials, waste, or contamination
- Phase I or Phase II archaeological investigations
- Groundwater studies or analysis
- Preparation or submittal of Section 404/401 Individual Permit
- Preparation of Floodplain Development Permits or FEMA Coordination
- Preparation or submittal of US Coast Guard Bridge Permit and/or Navigation Impact Report

Task 2 – Geotechnical Engineering Services

The proposed Scope of Services consists of field exploration, laboratory testing, and engineering/project delivery. These services are described in the following sections.

Task 2.1 Field Exploration

Based on input provided by Kimley-Horn, and our experience with similar projects in the vicinity of the project site, we propose the following field exploration program which is anticipated to be completed within 3 days of on-site activities.

Number of Borings	Planned Boring Depth (feet) ¹	Planned Location
2	100	Bridge End Bents
2	10	Roadway Alignment
2 (Alternate Add On)	30	Mitigation Walls (If needed)

1. Although not anticipated based on the geology in the vicinity of the project site, borings would be terminated at shallower depths if refusal is encountered.

- Boring Layout and Elevations: We will use handheld GPS equipment to locate borings with

an estimated horizontal accuracy of +/-20 feet. Field measurements from existing site features may be utilized. If available, approximate elevations will be obtained by interpolation from a site specific, surveyed topographic map. We can alternatively coordinate with your project Surveyor to include locations and surface elevations in project information if so requested.

- **Subsurface Exploration Procedures:** The subsurface exploration procedures will be monitored by a Geotechnical Engineering representative who will develop field boring logs. We will advance borings with a track-mounted drill rig using rotary wash boring techniques. Six samples will be obtained in the upper 12 feet of each boring and at intervals of 5 feet thereafter. Soil sampling is typically performed using thin-wall tube and/or split-barrel sampling procedures. The split-barrel samplers are driven in accordance with the standard penetration test (SPT). The samples will be placed in appropriate containers, taken to our soil laboratory for testing, and classified by a Geotechnical Engineer. In addition, we will observe and record groundwater levels during drilling and sampling.

Our exploration team will prepare field boring logs as part of standard drilling operations including sampling depths, penetration distances, and other relevant sampling information. Field logs include visual classifications of materials observed during drilling and our interpretation of subsurface conditions between samples. Final boring logs, prepared from field logs, represent the Geotechnical Engineer's interpretation and include modifications based on observations and laboratory tests.

- **Property Disturbance:** Terracon will take reasonable efforts to reduce damage to the property. However, it should be understood that in the normal course of our work some disturbance could occur including rutting of the ground surface and damage to landscaping and/or crops.

We will backfill borings with bentonite pellets upon completion. Pavements will be patched with cold-mix asphalt. Our services do not include repair of the site beyond backfilling our boreholes and patching existing pavements. Excess auger cuttings will be dispersed in the general vicinity of the borehole. Because backfill material often settles below the surface after a period, we recommend boreholes to be periodically checked and backfilled, if necessary. We can provide this service or grout the boreholes for additional fees at your request.

Task 2.2 Safety

Terracon is not aware of environmental concerns at this project site that would create health or safety hazards associated with our exploration program; thus, our Scope considers standard OSHA Level D Personal Protection Equipment (PPE) appropriate. Our Scope of Services does not include environmental site assessment services, but identification of unusual or unnatural materials observed while drilling will be noted on our logs.

Exploration efforts require borings into the subsurface, therefore Terracon will comply with local regulations to request a utility location service through NC811. We will consult with the landowner/client regarding potential utilities or other unmarked underground hazards. Based upon the results of this consultation, we will consider the need for alternative subsurface exploration methods as the safety of our field crew is a priority. Private utilities should be marked by the owner/client prior to commencement of field exploration. Terracon will not be responsible for damage to private utilities not disclosed to us.

Terracon's Scope of Services does not include private utility locating services. If the landowner/client is unable to accurately locate private utilities, and it becomes apparent that the risk of private utilities on/near the site exists, then Terracon will initiate these services by forwarding the additional scope and corresponding fee to our client for approval.

The detection of underground utilities is dependent upon the composition and construction of the utility line; some utilities are comprised of non-electrically conductive materials and may not be readily detected. The use of a private utility locate service would not relieve the landowner/client of their responsibilities in identifying private underground utilities.

- **Site Access:** Terracon must be granted access to the site by the property owner. Without information to the contrary, we consider acceptance of this proposal as authorization to access the property for conducting field exploration in accordance with the Scope of Services. Our proposed fees do not include time to negotiate and coordinate access with landowners or tenants. Terracon will conduct field services during normal business hours (Monday through Friday between 7:00am and 5:00pm). If our exploration must take place over a weekend or at night, please contact us so we can adjust our schedule and fee.
- **Traffic Control:** For the work scope of this proposal, we have budgeted for subcontracting traffic control services (signage and flagman) during our drilling activities, which is anticipated to take less than one day. This proposal is based on the assumption that one traffic lane can be closed temporarily within a hundred feet (+/-) of our drill rig during our drilling activities. Alternatively, others could provide all required traffic control as a cost savings measure.

Task 2.3 Laboratory Testing

The project engineer will review field data and assign laboratory tests to understand the engineering properties of various soil strata. Exact types and number of tests cannot be defined until completion of fieldwork, but we anticipate the following laboratory testing may be performed:

- Water content
- Atterberg limits
- Grain size analysis
- California Bearing Ratio (CBR)

Our laboratory testing program often includes examination of soil samples by an engineer. Based on the results of our field and laboratory programs, we will describe and classify soil samples in accordance with the Unified Soil Classification System (USCS).

Task 2.4 Engineering and Project Delivery

The results of our field and laboratory programs will be evaluated, and a geotechnical engineering report will be prepared under the supervision of a licensed professional engineer. The geotechnical engineering report will provide the following:

- Boring logs with field and laboratory data
- Stratification based on visual soil (and rock) classification
- Groundwater levels observed during and after the completion of drilling
- Site Location and Exploration Plans
- Subsurface exploration procedures

- Description of subsurface conditions
- Recommended foundation options and engineering design parameters
- Estimated settlement of foundations
- Seismic site classification
- Earthwork recommendations including site/subgrade preparation
- Lateral earth pressure recommendations
- Recommended pavement options and design parameters
- Slope stability analysis of sloped embankments

In addition to an emailed report, your project will also be delivered using our Client Portal. Upon initiation, we provide you and your design team the necessary link and password to access the website (if not previously registered). Each project includes a calendar to track the schedule, an interactive site map, a listing of team members, access to the project documents as they are uploaded to the site, and a collaboration portal. We welcome the opportunity to have project kickoff conversations with the team to discuss key elements of the project and demonstrate features of the portal. The typical delivery process includes the following:

- Project Planning – Proposal information, schedule and anticipated exploration plan
- Site Characterization – Findings of the site exploration and laboratory results
- Geotechnical Engineering Report

Additional Services:

In addition to the services noted above, the following are often associated with geotechnical engineering services. Fees for services noted above do not include the following:

Review of Plans and Specifications: Our geotechnical report and associated verbal and written communications will be used by others in the design team to develop plans and specifications for construction. Review of project plans and specifications is a vital part of our geotechnical engineering services. This consists of review of project plans and specifications related to site preparation, foundation, and pavement construction. Our review will include a written statement conveying our opinions relating to the plans and specifications' consistency with our geotechnical engineering recommendations.

Observation and Testing of Pertinent Construction Materials: Development of our geotechnical engineering recommendations and report relies on an interpretation of soil conditions. Our assessment is based on widely spaced exploration locations and the assumption that construction methods will be performed in a manner sufficient to meet our expectations and consistent with recommendations made at the time the geotechnical engineering report is issued. We should be retained to conduct construction observations, and perform/document associated materials testing, for site preparation, foundation, and pavement construction. These services allow a more comprehensive understanding of subsurface conditions and necessary documentation of construction to confirm and/or modify (when necessary) the assumptions and recommendations made by our engineers.

Perform Environmental Assessments: Our Scope for this project does not include, either specifically or by implication, an environmental assessment of the site intended to identify or quantify potential site contaminants. If the client/owner is concerned about the potential for such conditions, an environmental site assessment should be conducted. We can provide a proposal for an environmental assessment, if desired.

Task 3 – Topographic Survey

ENGINEER/SURVEYOR will conduct a topographic surveying and mapping for the project (approximately 2.75 acres). This survey will be for the sole purpose of the future Southern Shores Trinitie Trail Culvert Project. The survey shall be conducted by, or under the supervision of a Professional Surveyor licensed to practice in North Carolina. All surveying and mapping to be performed in accordance with 21 NCAC 56.1600 and the scope of work as outlined below:

Task 3.1 Topographic Surveying Requirements

- Show Parcel lines including street right of ways and jurisdiction, width and type of pavement.
- Location and description of existing visible structures within the project area including top elevation and spot elevations at corners; including structure inverts if accessible, without confined space entry.
- Show recorded or otherwise known easements and/or rights-of-way and identify owners (holders) if known.
- Show names of owners of adjacent property, if applicable.
- Horizontal Datum shall be NAD83/2011 and control established to the Class A standard or better.
- Vertical Datum shall be NAVD 88 and established at the site to Class C (GPS) standard or better.
- Provide a minimum of two temporary benchmarks on site with a description and elevation to nearest 0.01 foot and two semi-permanent control points with coordinates for future use.
- One foot contour interval; error shall not exceed one-half contour interval, except as noted.
- Spot elevations to be taken at 50-foot grid or less on natural ground and 25-50 feet (as necessary) on center along hard surface features such as curb, centerline roads and edge of pavement. Additional spots as needed are to be taken along topographic features, i.e., top of bank, toe of bank, centerline ditch, grade breaks, high points and low points, to accurately depict existing conditions.
- Provide utility information from record drawing provided by the client or if obtainable from the utility provider; in addition, an NC811 locate will be requested for the site survey limits. NC811 Ticket numbers are to be listed on the face of the survey. (NOTE: NC811 may not mark for survey tickets.)
- Tree Survey: Collect only 12" diameter trees (at breast height) and greater within the right of way and 10-feet outside of the existing right of way for Trinitie Trail. (Reference Exhibit B) No trees to be located outside the tree survey limits.
- Collect Soundings within the canal

Task 3.2 Mapping Requirements

- Map or Map set should collectively include the entire Project Survey limits
- Furnish two (2) copies Drawing shall be signed and sealed by Professional Land Surveyor with the appropriate certifications per 21 NCAC 56.1600.
- Drawings shall note all dimensions and elevation in U.S feet.
- Drawing sheets shall be trim size 24" x 36" or 30" x 42" with 1 1/2 inch left binding edge and 1/2" borders.
- Provide legend of symbols and abbreviations used on drawings.
- Provide spot elevations on paved or other hard surfaces to the nearest hundredth of a foot and natural ground to the nearest tenth of a foot.

- Provide elevation datum on drawings and show location of each temporary benchmark and horizontal control point.

Task 3.3 Electronic File Requirements

- Furnish digital file compatible with AutoCAD of the completed survey. Electronic base file should collectively include the entire project limits and must contain all the survey information depicted on the signed and sealed hard copy, excluding signature and seal. Seal must be replaced as required by 21 NCAC 56.
- Furnish Digital Terrain Model TIN of completed work and LandXML file of the surface.

Task 4 – SUE Investigation

SAM will provide SUE Locating services in accordance with CI/ASCE Standard 38-02, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data: “A branch of engineering practice that involves managing certain risks associated with: utility mapping at appropriate quality levels, utility coordination, utility relocation design and coordination, utility condition assessment, communication of utility data to certain parties, utility relocation cost estimates, implementation of utility accommodation policies, and utility design.”

Quality Level B – Designating and Marking

SAM staff will utilize the suite of geophysical equipment in each vehicle to attempt to designate the utilities identified in the Project Description within the area(s) of interest. Quality Level B services for this project include:

- Obtaining permits from city, county or other municipalities to allow SAM, LLC staff to work in streets, roads, or right-of-ways.
- Utilizing normal traffic control, including standard placement of traffic cones, freestanding warning signage and vehicle-mounted traffic directional sign.
- Designating and marking underground utilities within the project limits using an appropriate suite of surface geophysical methods. Typical equipment utilized includes: (1.) Radiodetection (RD8100 and Metrotech Vivax VM 810 & vLocML Cable and Pipe Locator) (2.) Acoustic (ULTRA-TRAC® Acoustic Pipe Locator) (3.) GPR (Single and/or Dual Frequency) (4.) Magnetic locators.
- Marking the utilities at maximum 50 foot intervals and at changes in direction.
- Attempting to locate water lines, force mains, and other non-toneable utilities using ground penetrating radar. If successful, these utilities will be marked as Quality Level B. If unsuccessful, these utilities will be marked Quality Level D. If appropriate, Test Holes may be recommended to establish the precise location for design.
- Marking each utility run with the appropriate surveying code and number for each mark. This will be noted on the field sketch for use by the surveyor and our quality control staff.
- Surveying markings that indicate the presence of a utility. Horizontal data will be held to the accuracies and precision dictated by the project’s survey control.
- Plotting survey data on base plans provided by client using either AutoCAD or MicroStation platforms.

Task 5 – Document Review & Coordination

As a part of obtaining Final Topographic Survey and SUE Investigation, Kimley-Horn will review and verify the information collected and presented. Typically, this occurs immediately following the submission of the above information and rolls directly into final design; however, since the project has been separated into multiple Task Orders, this review will need to occur as a part of Task Order #1 to ensure completeness and accuracy of information collected with regard to incorporation into Final Design (Task Order #2).

Services Not Included

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

- Public Involvement
- Other NEPA/SEPA tasks that are not explicitly described in Task 1 above
- Utilities By Others plans, showing dry utility (telecommunications and electric) relocations
- Wet Utility Relocation Design and Permitting
- Wet Utility Final Certification(s) and Record Drawings
- Right of Way Acquisition
- Construction Phase Services

Any services not specifically provided for in the above Scope of Services will be billed as additional services and performed at our then current hourly rates.

Additional Services to Be Included in Task Order #2

These services are not included as a part of this Agreement, but will be included in Task Order #2:

- Hydraulic Design
- Roadway Design
- Structural Design
- Erosion Control Plans
- Traffic Management Plan
- Pavement Marking and Signing
- Utility Coordination
- Bid Phase Services

Information Provided by Client

None at this time. If needed, Kimley-Horn will coordinate with the Town.

The Town is continuing to coordinate with the Coast Guard and will provide any updates as they occur regarding overall structure height and additional coordination required.

Schedule

Upon receiving Notice to Proceed from the Client, Kimley-Horn, in collaboration with the Town and all disciplines associated with Task Order #1, will develop an overall project schedule. Any necessary coordination with the Town as it results from scheduling will be handled as detailed in each specific discipline task as described above. Any necessary site visits will be coordinated separately with the Town.

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 – 5 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 – Environmental_____	\$86,070
Task 2 – Geotechnical Engineering Services_____	\$31,820
Task 3 – Topographic Survey_____	\$40,830
Task 4 – SUE Investigation_____	\$8,800
Task 5 – Document Review & Coordination_____	\$9,260
 Total Lump Sum Labor Fee for Task Order #1_____	 \$176,780

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.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Seth A. Denney, P.E.

Andrew L. Phillips, P.E.

Assistant Secretary

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) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn'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 Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
 - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
 - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
 - 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 Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn 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 Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn 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 Kimley-Horn 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 Kimley-Horn's transmittal of its invoice, Kimley-Horn 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 Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
 - c. If the Client objects to an invoice, it must advise Kimley-Horn 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 Kimley-Horn 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 Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - e. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn 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 Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Documents.** All documents and data prepared by Kimley-Horn 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 Kimley-Horn's documents, or any reuse of the documents without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn 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 Kimley-Horn, the hardcopy shall govern.

- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn 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 Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.
- 7) **Opinions of Cost.** Because Kimley-Horn 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. Kimley-Horn 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. Kimley-Horn'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. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn'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 Kimley-Horn's performance of services, and it is agreed that Kimley-Horn 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 Kimley-Horn, 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 Kimley-Horn and Kimley-Horn'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 Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn 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 Kimley-Horn.
- 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 Kimley-Horn 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. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn 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 Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate

to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn 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.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
- a. If Kimley-Horn prepares construction documents and Kimley-Horn 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 Kimley-Horn in any way connected thereto.
 - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn'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 Kimley-Horn. Kimley-Horn 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. Kimley-Horn 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 Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn 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 Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. 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 Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn 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 Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn 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 Kimley-Horn. If Client requires Kimley-Horn 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 Kimley-Horn 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.