



TOWN OF SOUTHERN SHORES
TOWN COUNCIL WORKSHOP 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 15, 2022 at 9:00 AM

AGENDA

Call to Order

Pledge of Allegiance

Moment of Silence

Amendments to / Approval of Agenda

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

Business Items

1. Consideration of Pavement Maintenance Plan Bid Packet page 2
2. Consideration of Dominion Power Easement-Phase II Underground Project page 113
3. Consideration of Resolution 2022-03-02 Authorizing the process of collection of the remaining beach nourishment easements. page 120

Council Comments

Adjourn



AGENDA ITEM SUMMARY

MEETING DATE: March 15, 2022

ITEM TITLE: Consideration of Pavement Maintenance Plan Bid Packet

ITEM SUMMARY:

Presented for Council's consideration are the documents associated with the 2022 street maintenance work. The Town recently completed a Pavement Condition Study and used the results to form a 10-year Capital Improvement Plan. This year marks the first year's work identified in the CIP.

STAFF RECOMMENDATION: Staff recommends approval.

REQUESTED ACTION: A motion to approve the Town Manager to advertise for bids.

ATTACHMENTS: Advertisement for Bids Project Manual

ADVERTISEMENT FOR BIDS

Town of Southern Shores



Street Improvement Project

Project #: 22PAVE

March 16, 2022

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APPENDIX A (Project Standard Construction Specifications)

APPENDIX B (Project Typical Sections)

APPENDIX C (Location Maps)

Town of Southern Shores Street Improvement Project

The Town of Southern Shores will receive sealed bids for the following Project:

PROJECT NAME: Southern Shores Street Improvements

BID DUE DATE & TIME: March 31, 2022 AT 10:00 AM

SCOPE OF WORK: The proposed project is located within the right-of-way or easements on various streets in Southern Shores, NC. The project includes the repair, patching, and/or rehabilitation of the following streets:

STREET NAME	BEGINNING STREET	END DESCRIPTION
HICKORY TRL	NC 12	DEAD END
HILLCREST DR	SEA OATS TRL	HICKORY TRL
TRINITIE TRL	CHICAHAIK TRL	EAGLES NEST LN
HILLCREST DR	HICKORY TRL	E DOGWOOD TRL
S DOGWOOD TRL	GINGUITE TRL	TEAL CT
S DOGWOOD TRL	YAUPON TRL	FAIRWAY DR
S DOGWOOD TRL	FAIRWAY DR	GINGUITE TRL
S DOGWOOD TRL	E DOGWOOD TRL	YAUPON TRL
HAPPY INDIAN LN	HIGH DUNE LOOP	DEAD END
SOUNDVIEW TRL	SEA OATS TRL	NORTH DUNE LOOP
6TH AVE	NC 12	6TH AVE
HIGH DUNE LOOP	SPINDRIFT TRL	SPINDRIFT TRL
4TH AVE	NC 12	4TH AVE
12TH AVE	NC 12	12TH AVE
6TH AVE	DEAD END	DEAD END
7TH AVE	NC 12	7TH AVE
GRAVEY POND LN	DEAD END	DEAD END
TURTLE POND CT	POTESKEET TRL	DEAD END
WOODLAND DR	E DOGWOOD TRL	N WOODLAND DR
MIZZENMAST LN	SEA OATS LN	DEAD END

This advertisement will be posted on Town of Southern Shores website.

Interested bidders must obtain an official bid package in order to bid. Contract Documents are available at the following location:

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

One copy of the Contract Documents will also be available for reference at the Town Hall.

A Pre-bid Conference will be held on March 24, 2022 at 10:00 AM in the Council Chambers of the Town Hall Building, located at 5375 N. Virginia Dare Trail, Southern Shores, North Carolina 27949.

Although attendance is not mandatory, it is strongly encouraged and recommended. At that time the special provisions of the project and method of measurement and payment for the various bid items will be discussed along with other various aspects of the project. Attendees will visit several sites as a group and view the work in the field. Bidders will be encouraged to ask questions. An addendum outlining the items discussed at the Pre-bid Conference will not be issued however, any changes to or clarifications of the project documents that occur as a result of the Pre-bid Conference will be issued as an addendum.

Pursuant to the General Statutes of North Carolina, Section 143-129, separate sealed bids will be received by the TOWN OF SOUTHERN SHORES, North Carolina, in Town Hall Building located at 5375 N. Virginia Dare Trail, Southern Shores, North Carolina 27949, through March 31, 2022 at 10:00 a.m. Immediately thereafter, all bids will be publicly opened and read for the furnishing of all labor, material, equipment, supplies and supervision for the construction of the Street Improvement Projects.

The Town of Southern Shores is an equal opportunity municipality and invites small and minority contractors to bid. No BIDDER may withdraw his bid within 60 days of the date of bid opening without forfeiting the bid bond. The TOWN reserves the right to waive any informality or to reject any or all bids. The BIDDER to whom contract is awarded must comply fully with requirements of G.S. Section 143-129, as amended including a bond in the full amount of the contract to secure the faithful performance of the contract and the payment of all services due for labor and materials.

Bidders must be properly licensed under North Carolina state law to perform the work.

For more project information, contact Chris Corriher, SEPI Engineering, at (704) 467-2252 or ccorriher@sepiinc.com.

Return sealed bid package to:

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

The Town of Southern Shores reserves the right to reject any and all bids and to waive any informalities or technicalities as it may deem to be in its best interest.

TOWN OF SOUTHERN SHORES
CONTRACT PROPOSAL

PROJECT NUMBER: 22PAVE

COUNTY: DARE

DESCRIPTION: STREET IMPROVEMENT PROJECT

DATE OF ADVERTISEMENT: MARCH 18, 2022

OPTIONAL PRE-BID MEETING: MARCH 24, 2022

BID OPENING: MARCH 31, 2022

***** NOTICE *****

ALL BIDDERS SHALL COMPLY WITH ALL APPLICABLE LAWS REGULATING THE PRACTICE OF GENERAL CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA. FOR CONTRACTS \$30,000 OR MORE, EXCEPT FOR CERTAIN SPECIALTY WORK AS DETERMINED BY THE LICENSING BOARD, BIDDERS ARE REQUIRED TO BECOME LICENSED BY THE NC LICENSING BOARD. NON-LICENSED BIDDERS ARE PERMITTED 60 DAYS AFTER BID OPENING TO OBTAIN PROPER LICENSING FOR THE TYPE OF PROJECT BEING LET. BIDDERS SHALL ALSO COMPLY WITH ALL OTHER APPLICABLE LAWS REGULATING THE PRACTICES OF ELECTRICAL, PLUMBING, HEATING AND AIR CONDITIONING AND REFRIGERATION CONTRACTING AS CONTAINED IN CHAPTER 87 OF THE GENERAL STATUTES OF NORTH CAROLINA.

The undersigned, as BIDDER, hereby declares that the only person or persons interested in this proposal as principal or principals is or are named herein and that no other person than herein mentioned has any interest in this proposal or in the contract to be entered into; that this proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respects fair and in good faith without collusion or fraud.

The BIDDER further declares that he has examined the site of the work and informed himself fully in regard to all conditions pertaining to the place where the work is to be done; that he has examined the specifications for the work and the contract documents relative thereto, and has read all special provisions furnished prior to the opening of bids; that he has satisfied himself relative to the work to be performed. The BIDDER proposes and agrees if this proposal is accepted to contract with the TOWN OF SOUTHERN SHORES, North Carolina, in the form of contract specified, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and labor necessary to complete the construction of:

Town of Southern Shores – Street Improvement Projects

In full and in complete accordance with the plans, specifications and contract documents, to the full and entire satisfaction of the Town of Southern Shores, with a definite understanding that no money will be allowed for extra work except as set forth in the General Conditions and Contract Documents, for the sum of:

\$ _____

Unit prices will be used to pay for actual quantities or materials installed or work done and will be used in changes in quantities as authorized by the MANAGER.

The BIDDER hereby proposes and agrees to commence work under this contract on a date to be specified in a written order of the MANAGER and shall fully complete all work thereunder within the time proposed by the BIDDER on the bid proposal from and including said date. For each day in excess of the stated number of days, the CONTRACTOR shall pay the OWNER the sum stated in the General Conditions as liquidated damages.

RETURN BIDS TO: TOWN OF SOUTHERN SHORES

Attention: Cliff Ogburn, Town Manager

Physical Address: 5375 N. Virginia Dare Trail, Southern Shores, North Carolina 27949

ALL BIDS MUST BE RECEIVED PRIOR TO THE DATE AND TIME LISTED ABOVE.

Respectfully submitted this _____ day of _____, .

Name of Firm or Corporation

By: _____
Witness

By: _____

Title: _____

(Seal if Bid is By a Corporation)

Business Address

License No.

BID FORM

The BIDDER agrees to perform all the contract work described in the specifications and shown on the plans for the following unit prices:

BASE BID SHALL BE UNIT PRICE BASED AS SHOWN BELOW:

<u>Item #</u>	<u>Std. Item. No</u>	<u>Sect</u>	<u>Item</u>	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Line Item Total</u>
1	0000100000-N	800	Mobilization	1	LS		
2	0043000000-N	226	Lump Sum Traffic Control**	1	LS		
3	0036000000-E	225	Undercut Excavation	50	CY		
4	0195000000-E	265	Select Granular Material	50	CY		
5	0196000000-E	270	Geotextile for Soil Stabilization	200	SY		
6	1575000000-E	620	Liquid Asphalt for Plant Mix	95	TON		
7	1704000000-E	SP	Patching Existing Asphalt – Patching with 2" – 3" I19.0B	400	TON		
8	1704000000-E	SP	Patching Existing Asphalt – Full Depth Patching with 4"-6"B25.0C	670	TON		
9	1519000000-E	610	Asphalt Surface Course - I9.5B – 1.5" - 2" depth	740	TON		
11	1297000000-E	607	Milling Asphalt Pavement (2" to 2.5" depth for resurfacing)	4050	SY		
12	2830000000-N	858	Adjustment of Manholes	2	EA		
13	2845000000-N	858	Adjustment of Meter Boxes or Valve Boxes	2	EA		
14		545	Incidental Stone Base (ABC)	100	TON		
TOTAL COST OF ALL LINE ITEMS							
\$							

Unit prices are complete for labor, equipment, material, overhead and profit. Base Bid includes the quantity of each item to be furnished complete according to the work shown on the plans and specifications and as estimated herein, inclusive of all appurtenances, as shown and specified.

***Lump Sum Traffic Control includes all work zone signing (temporary and permanent), flagging, etc. to maintain traffic according to the MUTCD. Also included in this item is all cleanup to finish project i.e. picking up extra asphalt, trash, and debris from project.*

INSTRUCTIONS TO BIDDERS

PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE PREPARING AND SUBMITTING YOUR BID.

All bids shall be prepared and submitted in accordance with the following requirements. Failure to comply with any requirement shall cause the bid to be considered irregular and shall be grounds for rejection of the bid.

1. The bid form furnished by **THE TOWN OF SOUTHERN SHORES** with the proposal shall be used and shall not be altered in any manner. **DO NOT SEPARATE THE BID FORM FROM THE PROPOSAL!**
2. All entries on the bid form, including signatures, shall be written in ink.
3. The Bidder shall submit a unit price for every item on the bid form. The unit prices for the various contract items shall be written in figures. *****Unit prices must be limited to TWO decimal places.*****
4. An amount bid shall be entered on the bid form for every item. The amount bid for each item shall be determined by multiplying each unit bid by the quantity for that item, and shall be written in figures in the "Amount Bid" column of the form.
5. The total amount bid shall be written in figures in the proper place on the bid form. The total amount shall be determined by adding the amounts bid for each item.
6. Changes in any entry shall be made by marking through the entry in ink and making the correct entry adjacent thereto in ink. A representative of the Bidder shall initial the change in ink. Do not use "White Out" or similar product to make corrections.
7. The bid shall be properly executed. All bids shall show the following information:
 - a. Name of individual, firm, corporation, partnership, or joint venture submitting bid.
 - b. Name of individual or representative submitting bid and position or title.
 - c. Name, signature, and position or title of witness.
 - d. Federal Identification Number
 - e. Contractor's License Number (If available)
8. Bids submitted by corporations shall bear the seal of the corporation.
9. The bid shall not contain any unauthorized additions, deletions, or conditional bids.
10. The bidder shall not add any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.

11. THE PROPOSAL WITH THE BID FORM STILL ATTACHED SHALL BE PLACED IN AN OPAQUE SEALED ENVELOPE, MARKED "PROPOSAL" AND BEARING THE TITLE OF THE BID NUMBER, THE NAME OF THE BIDDER, AND THE BIDDER'S LICENSE NUMBER, AND SHALL HAVE BEEN DELIVERED TO AND RECEIVED IN THE OFFICE OF THE TOWN MANAGER, TOWN HALL BUILDING LOCATED AT 5375 N. VIRGINIA DARE TRAIL, SOUTHERN SHORES, NORTH CAROLINA 27949, BY 10:00 ON MARCH 31, 2022.

12. The sealed bid must display the following statement on the front of the sealed envelope:

"QUOTATION FOR – STREET IMPROVEMENT PROJECTS IN SOUTHERN SHORES TO BE OPENED AT 10:00 A.M. ON MARCH 31, 2022."

13. If delivered by mail, the sealed envelope shall be placed in another sealed envelope and the outer envelope shall be addressed as follows:

TOWN OF SOUTHERN SHORES

**Attn: Cliff Ogburn - Town Manager
5375 N. Virginia Dare Trail
Southern Shores, NC 27949**

STANDARD NOTES

- A. NCDOT Standard Specifications — The Town will utilize the *2018 North Carolina Department of Transportation Standard Specifications for Roads and Structures*, herein referred to as the ‘Standard Specifications’, and the *2018 Roadway Standard Drawings*, shall apply to all portions of this project except as may be modified by this document.
- B. Award of Contract - The contract will be awarded to the lowest responsible, responsive bidder. Alternate items will not be considered in determining the low bidder and will only be evaluated after the award of the contract is made.
- C. Contractor Licensing — Non-licensed contractors are permitted to submit bids, however they must be licensed prior to performing any work. Bidders are permitted 60 days, after bid opening, to become licensed by the North Carolina Licensing Board. If they fail to do so within 60 days, their bid will be considered non-responsive and will be rejected. If the successful bidder does not hold the proper license to perform any plumbing, heating, air conditioning, or electrical work in this contract, he will be required to sublet such work to a contractor properly licensed in accordance with *Article 2 of Chapter 87 of the General Statutes* (licensing of heating, plumbing, and air conditioning contractors) and *Article 4 of Chapter 87 of the General Statutes* (licensing of electrical contractors).
- D. Bonds - Please note that all Bid Bonds, Payment Bonds, and Performance Bonds required for this project, shall be those found on the NCDOT website.
- E. Liability Insurance — In addition to any insurance requirements as may be required by the UA, the Contractor is obligated to comply with Article 107-15 of the *Standard Specifications* including the dollar limits set forth.
- F. Proprietary Items - When a proprietary (brand name) product, whether material, equipment or procedure, are specified in the plans or specifications, they are used only to denote the style, type, character, and quality desired of the product. They do not restrict the bidder from proposing other brands, makes, or manufacturers, which are determined to be of equal quality. The approval, or disapproval of those products, will be made by the Engineer prior to allowing those product(s) or material(s) to be incorporated into the work.
- G. Retainage by LGAs — The LCA for this contract will not retain any amount or percentage from progress payments or final estimates due the contractor.
- H. Retainage by Contractors — Contractors are NOT permitted to retain any amount or percentage from monies due their subcontractors or material suppliers on federally funded projects except as permitted by Subarticle 109-4(B) of the *Standard Specifications*.

- I. Traffic Control —The requirements of the *Manual on Uniform Traffic Control Devices (MUTCD)* — *FHWA*, as amended by the *NCDOT Supplement to MUTCD*, shall apply. Traffic Control, both vehicular and pedestrian, shall be maintained throughout the project as required by these specifications as modified by the project plans or special provisions.

ALLOWABLE CHANGES TO THE NCDOT 2018 STANDARD SPECIFICATIONS:

1. *Article 102-1 Invitation to Bid, page 1-9*, delete this section in its entirety.
2. *Subarticle 102-8(B) Electronic Bids, page 1-15*, delete this section in its entirety.
3. *Subarticle 102-9(C)2 Electronic Bids, page 1-17*, delete this section in its entirety.
4. *Subarticle 102-10 Bid Bond or Bid Deposit, page 1-18*, delete lines 16-27.
5. *Subarticle 102-11 Delivery of Bids, pages 1-18-19*, delete lines 31-32.
6. *Subarticle 102-12(A) Paper Bid, page 1-18*, line 37, the reference to “Contract Officer” shall be changed to “Town Manager”.
7. *Subarticle 102-12(B) Electronic Bid, pages 1-18 and 19*, delete this section in its entirety.
8. *Subarticle 102-13(B)2 Electronic Bids, page 1-19*, delete this section in its entirety.
9. *Subarticle 103-2(B) Electronic Bids, page 1-22*, delete this section in its entirety.
10. *Subarticle 103-3(A) Criteria for Withdrawal of Bid, page 1-22*, modify the reference “G.S. 136-28.1” to “G.S. 143-129.1”. On page 1-23, in that same subarticle under (5), line 11, modify “State Contract Officer” to “Town Manager”.
11. *Article 103-7 Contract Bonds, page 1-30*, line 5, modify “14” calendar days to “10” calendar days per G.S. 143-129.
12. *Article 103-9, Failure to Furnish Contract Bonds, page 1-30*, line 15, modify “14” calendar days to “10” calendar days per G.S. 143-129.
13. *Article 105-9 Construction Stakes, Lines and Grades, page 1-48*, delete this section in its entirety and substitute the following: “The Municipality will not set the stakes, lines or grades for this project.”
14. *Article 108-2, Progress Schedule, page 1-68*, add the following requirement as subarticle (D) on page 1-69: “The municipality may add additional requirements as noted in the bid proposal”.
15. *Article 108-3, Preconstruction Conference, page 1-69*, line 20, change “Division Engineer” to “Town Manager”.
16. *Article 108-4, Construction Conferences, page 1-69*, line 28, change “Resident Engineer” to “Town Manager”.

PROJECT SPECIAL PROVISIONS

GENERAL

MAINTENANCE OF TRAFFIC:

Unless otherwise approved by the Town Manager, the Contractor shall maintain a minimum of one lane of traffic at all times and will provide driveway access to all dwellings upon demand. Maintenance of traffic will be accomplished in accordance with the *North Carolina Department of Transportation Manual on Uniform Traffic Control Devices*.

CONTRACTOR'S REPRESENTATIVE:

In order to provide for the orderly progression of the project and the consistent quality of work, it is important that the contiguity of the project field representative be maintained. In that regard, the Contractor shall designate and provide one construction superintendent for the project. This one individual shall be the Contractor's field representative for the entire duration of the project unless otherwise specifically approved by the Engineer. Likewise, the Contractor shall designate and provide one paving foreman for all resurfacing work. This one individual shall direct all resurfacing operations for the entire duration of the project unless otherwise specifically approved by the Engineer.

YARD MAINTENANCE:

This work is being accomplished in front of existing dwellings. As such, the Contractor shall take all measures necessary to preserve the existing condition of the yards and lawns. Accordingly, the following restrictions and requirements shall be imposed on the Contractor.

- 1) No equipment, materials, or construction shall be permitted outside the limits of right-of-way or temporary construction easements.
- 2) The Contractor shall take all measures necessary to prohibit damage to existing yard trees.
- 3) The Contractor shall take all measures necessary to minimize damage to any existing yard shrubs and bushes.
- 4) The Contractor shall continually keep all paper, wrappers, bottles, cans, material wastes, and other miscellaneous debris cleaned up.

NOTICE TO PROCEED:

The notice to proceed shall state the date on which it is expected the Contractor may begin the construction and from which date contract time will be charged. The Contractor shall notify the Town Manager at least seven (7) days in advance of the time actual construction will begin. Once work begins, the Contractor is expected to work continuously until completion of the work.

MAINTAINING ACCESS:

The Contractor shall control his operations and the operations of his subcontractors and all suppliers so as to provide for the continuous movement of traffic.

When the work requires the Contractor to conduct his operations in an area, which disrupts the public access, the work shall be coordinated with the Town Manager at least 48 hours prior to commencement of such work.

The Contractor shall not close an area until so authorized by the Town Manager and until the necessary temporary sign(s) is in place.

WATER SOURCE:

The Contractor will be responsible for obtaining a water source. No separate payment will be made for this work, and all associated costs will be considered incidental to other items in the contract.

STORAGE OF MATERIALS:

In addition to *Section 106-5 of the January 2018 North Carolina Department of Transportation Standards and Specifications for Roadways and Structures* the following shall also apply: Private property shall not be used for storage purposes without written permission of the Owner of such property. The Contractor shall make all arrangements and bear all expenses for the storage of materials on private property other than areas specifically shown on the plans. Upon request, the Contractor shall furnish the Town Manager a copy of the property owner's permission.

DRUG FREE WORKPLACE:

The Contractor is to provide and maintain a drug free workplace, including certification, in accordance with the Federal Drug Free Workplace Act of 1988 (40 CFR Part 32).

MATERIALS SAMPLING AND TESTING:

The Town consulting engineer will select an independent company for materials sampling and testing with a recognized and approved testing laboratory. The expense of such tests shall be borne by the Town unless otherwise specified.

Note: The samples are to be transported by a third-party testing firm to the testing facility.

The Contractor shall coordinate with the Town or its assigns to provide access to and make available all materials necessary to be tested, as may be designated by the Consulting Engineer, in the presence of the Consulting Engineer, unless otherwise provided in the "Special Provisions." The Consulting Engineer may also require field test or tests on materials at the place of manufacture, by representatives of the Testing Laboratory which shall also be at the Town's expense.

NOTICE OF SUBSTANTIAL COMPLETION

Substantial completion and final payment should not be made to the Contractor until a final walk through and final records review with Town staff or their representative has taken place and found acceptable.

Before a Notice of Substantial completion is issued, the Contractor shall submit to the Engineer (or the Owner if indicated) certain records, certifications, etc., which are specified elsewhere in the Contract Documents. Missing, incomplete, unacceptable items, as determined by the Consulting Engineer or the Owner, shall constitute grounds for withholding final Payment to the Contractor. A partial list of such items appears below, but it shall be the Contractor's responsibility to submit any other items that are required in the Contract Documents:

- A. Test results of project components.
- B. Certification of materials in compliance with contract Documents.

CONTRACT TIME AND LIQUIDATED DAMAGES:

The date of availability for this contract is the issued date of the Notice to Proceed. The completion date for this contract is December 15, 2022. Observation periods required by the contract will not be a part of the work to be completed by the completion date and/or intermediate contract times stated in the contract. The acceptable completion of the observation periods that extend beyond the final completion date shall be a part of the work covered by the performance and payment bonds.

The liquidated damages for this contract are Five Hundred Dollars (\$500.00) per calendar day.

TIME RESTRICTIONS AND LIQUIDATED DAMAGES:

The Contractor shall complete the required work of installing, maintaining, and removing the traffic control devices for lane closures and restoring traffic to the existing traffic pattern. The Contractor shall not close or narrow a lane of traffic during the following time restrictions:

DAY AND TIME RESTRICTIONS

2:00 P.M. on FRIDAY AFTERNOON UNTIL 7:00 A.M. MONDAY MORNING

In addition, the Contractor shall not close or narrow a lane of traffic on [road name], detain and/or alter the traffic flow on or during holidays, holiday weekends, special events, or any other time when traffic is unusually heavy.

Holidays and holiday weekends shall include New Year's, Martin Luther King Jr.'s Birthday, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. The Contractor shall schedule his work so that lane closures will not be required during these periods, unless otherwise directed by the Engineer.

The liquidated damages are Five Hundred Dollars (\$ 500.00) per hour.

NO MAJOR CONTRACT ITEMS:

None of the items included in this contract will be major items.

NO SPECIALTY ITEMS:

None of the items included in this contract will be specialty items (see Article 108-6 of the *2018 Standard Specifications*).

PRICE ADJUSTMENT - ASPHALT BINDER FOR PLANT MIX:

Price adjustments for asphalt binder for plant mix will be made in accordance with Section 620 of the *2018 Standard Specifications*.

The base price index for asphalt binder for plant mix is \$ **540.45** per ton.

This base price index represents an average of F.O.B. selling prices of asphalt binder at supplier's terminals on **February 1, 2022**.

SUBSURFACE INFORMATION:

There is no subsurface/geotechnical information available on this project. The Contractor shall make his own investigation of subsurface conditions if desired.

TWELVE MONTH GUARANTEE

- (A) The Contractor shall guarantee materials and workmanship against latent and patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve months following the date of final acceptance of the work for maintenance and shall replace such defective materials and workmanship without cost to THE TOWN OF SOUTHERN SHORES. The Contractor will not be responsible for damage due to faulty design, normal wear and tear, for negligence on the part of THE TOWN OF SOUTHERN SHORES, and/or for use in excess of the design.
- (B) Where items of equipment or material carry a manufacturer's guarantee for any period in excess of twelve months, then the manufacturer's guarantee shall apply for that particular piece of equipment or material. THE TOWN OF SOUTHERN SHORES's first remedy shall be through the manufacturer although the Contractor is responsible for invoking the warranted repair work with the manufacturer. The Contractor's responsibility shall be limited to the term of the manufacturer's guarantee. THE TOWN OF SOUTHERN SHORES would be afforded the same warranty as provided by the Manufacturer.

This guarantee provision shall be invoked only for major components of work in which the Contractor would be wholly responsible for under the terms of the contract. Examples would include pavement structures, bridge components, and sign structures. This provision will not be used as a mechanism to force the Contractor to return to the project to make repairs or perform additional work that THE TOWN OF SOUTHERN SHORES would normally compensate the Contractor for. In addition, routine maintenance activities (i.e. mowing grass, debris removal, ruts in earth shoulders,) are not parts of this guarantee.

Appropriate provisions of the payment and/or performance bonds shall cover this guarantee for the project.

ADJUSTMENT OF MANHOLES, METER BOXES, AND VALVE BOXES:

The Contractor's attention is directed to Article 858-3 of the *2018 Standard Specifications*. Cast iron or steel fittings will not be permitted for the adjustment of manholes, meter boxes, and valve boxes on this project if necessary.

LUMP SUM PAYMENT FOR TRAFFIC CONTROL:

The Contractor shall maintain traffic on all streets during construction and shall provide, install and maintain all traffic control devices as shown in the *Roadway Standard Drawings* or as directed by the Engineer. The Contractor shall also clean up excess asphalt, gravel, trash, debris, etc. from each job location.

The lump sum price bid for traffic control shall include but not be limited to providing Signs (portable, stationary, or barricade), Flashing Arrow Boards (FAB), Pilot Vehicle, Flaggers, Cones, and Drums and all labor, tools, equipment and incidentals necessary to furnish, install, maintain and remove traffic control devices when no longer required.

Basis of Payment:

Partial payments will be made on each payment estimate based on the following: Fifty percent of the contract lump sum price bid will be paid on the first monthly estimate and the remaining 50% of the contract lump sum price bid will be paid on each subsequent estimate based on the percent of the project completed.

Payment will be made under: Lump Sum Traffic Control.

STANDARD CONSTRUCTION SPECIFICATIONS

See APPENDIX B for Standard Construction Specifications for this project.

SOUNDVIEW TRAIL MILLING & PAVING

Soundview paving calls for milling approximately 2" of asphalt and repaving with 2" S9.5B. The process will expose the subbase for this road; therefore, shall be completed as follows:

- Full depth patching of the Soundview map shall occur prior to milling.
- Special attention to weather, etc. for the day should be considered prior to starting milling.
- The concern is the subbase should not be exposed to inclement weather which could create issues with the repaving.
- Milling of pavement shall be scheduled for a time that allows for repaving the same day.
- Once milling progresses to the point of that single lane may be repaved, the paving operation shall begin.

MINORITY AND WOMEN BUSINESS ENTERPRISES (MBE & WBE)

The Town invites and encourages participation in this procurement process by minority and women business enterprises in accordance with North Carolina General Statute 143-128.2. Although there are no specific goals for this project, Contractors are encouraged to utilize and shall report all utilization of MBE and DBE subcontractors on this project.

LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

CONTRACT :	NAME OF BIDDER:
------------	-----------------

The undersigned intends to perform work in connection with the above contract upon execution of the bid and subsequent award of contract by the Town of Southern Shores as:

Name of MBE/WBE/DBE Subcontractor _____
 Address _____
 City _____ State _____ Zip _____

Please check all that apply:
 Minority Business Enterprise (MBE) _____
 Women Business Enterprise (WBE) _____
 Disadvantaged Business Enterprise (DBE) _____

The MBE /WBE /DBE status of the above-named subcontractor is certified by the North Carolina Department of Transportation. The above-named subcontractor is prepared to perform the described work listed on the attached MBE/WBE/DBE Commitment Items sheet, in connection with the above contract upon execution of the bid and subsequent award of contract by the Town of Southern Shores. The above-named subcontractor is prepared to perform the described work at the estimated Commitment Total for Subcontractor Price identified on the MBE/WBE/DBE Commitment Items sheet and amount indicated below.

Commitment Total based on estimated Unit Prices and Quantities on the "attached" MBE/WBE/DBE Commitment Items sheet:

Amount \$ _____

The above-named bidder and subcontractor mutually accepts the Commitment Total estimated for the Unit Prices and Quantities. This commitment total is based on estimated quantities only and most likely will vary up or down as the project is completed. Final compensation will be based on actual quantities of work performed and accepted during the pursuance of work. The above listed amount represents the entire dollar amount quoted based on these estimated quantities. No conversations, verbal agreements, and/or other forms of non-written representations shall serve to add, delete, or modify the terms as stated.

This document shall not serve in any manner as an actual subcontract between the two parties. A separate subcontractor agreement will describe in detail the contractual obligations of the bidder and the MBE/WBE/DBE subcontractor.

Affirmation

The above named MBE/ WBE/ DBE subcontractor affirms that it will perform the portion(s) of the contract for the estimated dollar value as stated above.

 Name of MBE/ WBE/ DBE Subcontractor

 Name of Bidder

 Signature / Title

 Signature / Title

 Date

 Date

LISTING OF DBE SUBCONTRACTORS			Sheet	of
Firm Name and Address	Item No.	Item Description	* Agreed upon Unit Price	** Dollar Volume of Item
Name Address				
Name Address				
Name Address				
Name Address				
Name Address				
Name Address				
Name Address				

* The Dollar Volume shown in this column shall be the Actual Price Agreed Upon by the Prime Contractor and the DBE subcontractor, and these prices will be used to determine the percentage of the DBE participation in the contract.

** Dollar Volume of DBE Subcontractor Percentage of Total Contract Bid Price:

If firm is a Material Supplier Only, show Dollar Volume as 60% of Agreed Upon Amount from Letter of Intent.

If firm is a Manufacturer, show Dollar Volume as 100% of Agreed Upon Amount from Letter of Intent.

LISTING OF DBE SUBCONTRACTORS			Sheet	of
Firm Name and Address	Item No.	Item Description	* Agreed upon Unit Price	** Dollar Volume of Item
Name Address				
Name Address				
Name Address				
Name Address				
Name Address				
Name Address				

* The Dollar Volume shown in this column shall be the Actual Price Agreed Upon by the Prime Contractor and the DBE subcontractor, and these prices will be used to determine the percentage of the DBE participation in the contract.

** Dollar Volume of DBE Subcontractor \$ _____

Percentage of Total Contract Bid Price _____ %

** Dollar Volume of DBE Subcontractor Percentage of Total Contract Bid Price:

If firm is a Material Supplier Only, show Dollar Volume as 60% of Agreed Upon Amount from Letter of Intent.

If firm is a Manufacturer, show Dollar Volume as 100% of Agreed Upon Amount from Letter of Intent.

Contract No. _____

County _____

EXECUTION OF BID
NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION

CORPORATION

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any Town Employee of any gift from anyone with a contract with the Town, or from any person seeking to do business with the Town. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

SIGNATURE OF CONTRACTOR

Full name of Corporation

Address as Prequalified

Attest _____

Secretary/Assistant Secretary
Select appropriate title

By _____

President/Vice President/Assistant Vice President
Select appropriate title

Print or type Signer's name

Print or type Signer's name

CORPORATE SEAL

AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the

_____ day of _____ 20__.

NOTARY SEAL

Signature of Notary Public

of _____ County

State of _____

My Commission Expires: _____

Contract No. _____

County _____

Item 1.

Rev. 11-1-12

M-4

**EXECUTION OF BID
NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION
PARTNERSHIP**

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any Town Employee of any gift from anyone with a contract with the Town, or from any person seeking to do business with the Town. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

SIGNATURE OF CONTRACTOR

Full Name of Partnership

Address as Prequalified

Signature of Witness By Signature of Partner

Print or type Signer's name

Print or type Signer's name

AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the

NOTARY SEAL

_____ day of _____ 20__.

Signature of Notary Public

of _____ County

State of _____

My Commission Expires: _____

Contract No. _____

County _____

Item 1.

Rev. 11-1-12

M-4

**EXECUTION OF BID
NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION
LIMITED LIABILITY COMPANY**

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Bidder intends to do the work with its own bona fide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any Town Employee of any gift from anyone with a contract with the Town, or from any person seeking to do business with the Town. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

SIGNATURE OF CONTRACTOR

Full Name of Firm

Address as Prequalified

Signature of Witness

Signature of Member/Manager/Authorized Agent
Select appropriate title

Print or type Signer's name

Print or type Signer's Name

AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the

NOTARY SEAL

_____ day of _____ 20

Signature of Notary Public

of _____ County

State of _____

My Commission Expires: _____

Contract No. _____

County _____

M-4

Rev. 11-1-12

**EXECUTION OF BID
NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN
CERTIFICATION**

JOINT VENTURE (2) or (3)

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any Town Employee of any gift from anyone with a contract with the Town, or from any person seeking to do business with the Town. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

SIGNATURE OF CONTRACTOR

Instructions: **2 Joint Venturers** Fill in lines (1), (2) and (3) and execute. **3 Joint Venturers** Fill in lines (1), (2), (3) and (4) and execute. On Line (1), fill in the name of the Joint Venture Company. On Line (2), fill in the name of one of the joint venturers and execute below in the appropriate manner. On Line (3), print or type the name of the other joint venturer and execute below in the appropriate manner. On Line (4), fill in the name of the third joint venturer, if applicable and execute below in the appropriate manner.

(1) _____
Name of Joint Venture

(2) _____
Name of Contractor

Address as Prequalified

Signature of Witness or Attest By Signature of Contractor

Print or type Signer's name Print or type Signer's name

If Corporation, affix Corporate Seal and

(3) _____
Name of Contractor

Address as Prequalified

Signature of Witness or Attest By Signature of Contractor

Print or type Signer's name Print or type Signer's name

If Corporation, affix Corporate Seal and

(4) _____
Name of Contractor Vol 3 Joint Venture only)

Address as Prequalified

Signature of Witness or Attest By Signature of Contractor

Print or type Signer's name Print or type Signer's name

If Corporation, affix Corporate Seal

NOTARY SEAL

Affidavit must be notarized for Line (2)

Subscribed and sworn to before me this
_____ day of _____ 20____

Signature of Notary Public
of _____ County
State of _____
My Commission Expires: _____

NOTARY SEAL

Affidavit must be notarized for Line (3)

Subscribed and sworn to before me this
_____ day of _____ 20____

Signature of Notary Public
of _____ County
State of _____
My Commission Expires: _____

NOTARY SEAL

Affidavit must be notarized for Line (4)

Subscribed and sworn to before me this
_____ day of _____ 20____

Signature of Notary Public
of _____ Count
State of _____
My Commission Expires: _____

Contract No. _____

Rev. 11-1-12

County _____

M-4

**EXECUTION OF BID
NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION**

INDIVIDUAL DOING BUSINESS UNDER A FIRM NAME

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the bidder has not been convicted of violating N.C.G.S. § 133-24 within the last three years, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any Town Employee of any gift from anyone with a contract with the Town, or from any person seeking to do business with the Town. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

SIGNATURE OF CONTRACTOR

Name of Contractor _____

Individual name

Trading and doing business as _____

Full name of Firm

Address as Prequalified

Signature of Witness

Signature of Contractor, Individually

Print or type Signer's name

Print or type Signer's name

AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the

NOTARY SEAL

_____ day of _____ 20

Signature of Notary Public

of _____ County

State of _____

My Commission Expires: _____

Contract No. _____

Rev. 11-1-12

County _____

M-4

**EXECUTION OF BID
NON-COLLUSION AFFIDAVIT, DEBARMENT CERTIFICATION AND GIFT BAN CERTIFICATION**

INDIVIDUAL DOING BUSINESS IN HIS OWN NAME

The person executing the bid, on behalf of the Bidder, being duly sworn, solemnly swears (or affirms) that neither he, nor any official, agent or employee of the bidder has entered into any agreement, participated in any collusion, or otherwise taken any action which is in restraint of free competitive bidding in connection with any bid or contract, that the bidder has not been convicted of violating *N.C.G.S. § 133-24* within the last three years, and that the Bidder intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor.

In addition, execution of this bid in the proper manner also constitutes the Bidder's certification of status under penalty of perjury under the laws of the United States in accordance with the Debarment Certification attached, provided that the Debarment Certification also includes any required statements concerning exceptions that are applicable.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any Town Employee of any gift from anyone with a contract with the Town, or from any person seeking to do business with the Town. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

SIGNATURE OF CONTRACTOR

Name of Contractor _____
Print or type Individual name

Address as Prequalified

Signature of Contractor, Individually

Print or type Signer's Name

Signature of Witness

Print or type Signer's name

AFFIDAVIT MUST BE NOTARIZED

Subscribed and sworn to before me this the

NOTARY SEAL

_____ day of _____ 20__.

Signature of Notary Public

of _____ County

State of _____

My Commission Expires: _____

Contract No. _____

Rev. 11-1-12

County _____

M-4

DEBARMENT CERTIFICATION

Conditions for certification:

1. The prequalified bidder shall provide immediate written notice to the Municipality if at any time the bidder learns that his certification was erroneous when he submitted his debarment certification or explanation filed with the Municipality, or has become erroneous because of changed circumstances.
2. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, us* used in this provision, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. A copy of the Federal Rules requiring this certification and detailing the definitions and coverages may be obtained from the Municipality project representative.
3. The prequalified bidder agrees by submitting this form, that he will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in Municipal contracts, unless authorized by the Municipality.
4. For Federal Aid projects, the prequalified bidder further agrees that by submitting this form he will include the Federal-Aid Provision titled *Required Contract Provisions Federal-Aid Construction Contract (Form FHWA PR 1273)* provided by the Municipality, without subsequent modification, in all lower tier covered transactions.
5. The prequalified bidder may rely upon a certification of a participant in a lower tier covered transaction that he is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless he knows that the certification is erroneous. The bidder may decide the method and frequency by which he will determine the eligibility of his subcontractors.
6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this provision. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
7. Except as authorized in paragraph 6 herein, the Municipality may terminate any contract if the bidder knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available by the Federal Government.

Contract No. _____

County _____

M-4

Rev. 11-1-12

DEBARMENT CERTIFICATION

The prequalified bidder certifies to the best of his knowledge and belief, that he and his principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph b. of this certification; and
- d. Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- e. Will submit a revised Debarment Certification immediately if his status changes and will show in his bid proposal an explanation for the change in status.

If the prequalified bidder cannot certify that he is not debarred, he shall provide an explanation with this submittal. An explanation will not necessarily result in denial of participation in a contract.

Failure to submit a non-collusion affidavit and debarment certification will result in the prequalified bidder's bid being considered non-responsive.

☐

Check here if an explanation is attached to this certification.

NOTICE OF AWARD

To:

From: Town of Southern Shores (Owner)
 5375 N. Virginia Dare Trail
 Southern Shores, N.C. 27949

PROJECT: Town of Southern Shores – Street Improvement Projects

CONTRACT AMOUNT: \$_____

You are hereby notified the Town of Southern Shores has accepted your Bid dated_____for the above described project. The Project name must be cited on all Invoices and/or Payment Request.

You are required to execute the formal contract with the Town of Southern Shores and to furnish any required Bonds and Insurance Certificates within fourteen (14) days from the date of delivery of the Notice to you.

If you fail to execute said contract and to furnish any required Bonds and Certificates within ten (10) days from the delivery of this Notice, the Town of Southern Shores will be entitled to consider all your rights arising out of their acceptance of your Bid as abandoned and to award the work covered by the contract to another contractor, to re-advertise the Project, or otherwise dispose thereof as the Town of Southern Shores sees fit.

Dated this____day_____, 20____

By: _____
 Title: Town Manager
 Town of Southern Shores

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

 Finance Officer

Distribution: Contractor Mail Fax Finance U Departments

ACCEPTANCE OF AWARD

Receipt of the Notice of Award is hereby acknowledged.

By: _____ Date: _____

Title: _____

FORM OF CONTRACT

THIS AGREEMENT, made the _____ day of _____, 20____ by and between _____ hereinafter called the Party of the First Part and the Town of Southern Shores, North Carolina, hereinafter called the Party of the Second Part.

WITNESSETH:

That the Party of the First Part and the Party of the Second Part for the consideration herein named, agree as follows:

1. Scope of Work: The Party of the First Part shall furnish and deliver all the materials, and perform all of the work in the manner and form as provided by the following enumerated plans, specifications and documents, which are attached hereto and made a part thereof as if fully contained herein; Advertisement, Instructions to Bidders, General Conditions, Special Provisions, Technical Specifications, Accepted Proposal, Contract, Performance Bond, Payment Bond, Power of Attorney, Workmen's Compensation, Public Liability, Property Damage and Builder's Risk Insurance Certificates, Approval of Town Attorney and Drawings, entitled:

Prepared by: _____

2. That the Party of the First Part shall commence work to be performed under this Agreement on a date to be specified in a written order of the Party of the Second Part and shall fully complete all work hereunder within 60 consecutive working days from said date.

The Party of the First Part, as one of the considerations for the awarding of this Contract, has furnished to the Party of the Second Part a construction schedule setting forth planned progress of the work broken down by the various divisions or parts of the work and by calendar days. In the event that the progress of the work is not maintained on schedule by the Party of the First Part, or in the event the work is not completed within the time above specified, the Party of the Second Part may upon fifteen (15) days notice, sent by Registered Mail, to the Party of the First Part and his Surety, declare this Contract in default, and thereupon, such Surety shall promptly take over the said work and complete the performance of this Contract in the manner and within the time above specified, and all funds due or to become due to the Party of the First Part shall be paid to the Surety. In the event the Surety shall fail to take over the work to be done under this Contract within fifteen (15) days after being so notified and notify the Party of the Second Part in writing, sent by Registered Mail, that he is taking the same over and stating that he will diligently pursue and complete the same, the Party of the Second Part shall have the right to let the work remaining to be done to some other Contractor, either by public letting or negotiation, and thereupon, the

Party of the First Part, the Contractor, and the Surety on his Bond shall forthwith pay the Party of the Second Part all increase in cost, or loss and damage which it may sustain on account of such default on the part of the Party of the First Part.

3. The Party of the Second Part hereby agrees to pay the Party of the First Part for the faithful performance of this Agreement, subject to additions and deductions as provided in the specifications or proposal, in lawful money of the United States as follows:

_____ Dollars ()

Summary of Contract Award:

4. Within 15 days of approval of partial payment request by the Town MANAGER, the Party of the Second Part shall make partial payments to the Party of the First Part on the basis of the duly certified and approved estimate of work performed during the preceding period by the First Party, less five percent (5%) of the amount of such estimate which is to be retained by the Second Party until all work has been performed strictly in accordance with this Agreement and until such work has been accepted by the Second Party.

5. Upon submission by the First Party of evidence satisfactory to the Second Party that all payrolls, material bills and other costs incurred by the First Party in connection with the construction of this Agreement shall be made within thirty (30) days after the completion by the First Party of all work covered by this Agreement and the acceptance of such work by the Second Party.

6. It is further mutually agreed between the parties hereto that if at any time after the execution of this Agreement and the Surety Bond hereto attached for its faithful performance, the Second Party shall deem the Surety or Sureties upon such Bond to be satisfactory, or if, for any reason such Bond ceases to be adequate to cover the performance of the work, the First Party shall, at its expense, within five (5) days after the receipt of notice from the Second Party so to do, furnish an additional Bond or Bonds in such form and amount, and with such Surety or Sureties as shall be satisfactory to the Second Party. In such event no further payment to the First Party shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Second party.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement on the day and date first above written in three (3) counterparts, each of which shall, without proof or accounting for other counterparts, be deemed an original Contract.

(Seal)

ATTEST:

Town of Southern Shores
Owner

BY _____
Town Clerk

BY _____
Town Manager

ATTEST:

(Seal)

BY _____
Secretary

Contractor

BY _____
Witness

BY _____

If Contractor is corporation
Secretary should attest. Give
proper title of each person
executing contract.

Title

Address

ACKNOWLEDGEMENT - See Instructions Below

Use the following form for acknowledgement signatures by a Corporation:

NORTH CAROLINA

DARE COUNTY

I, _____, a Notary Public in and for the aforesaid State and County, certify that _____ personally appeared before me this day and acknowledged that he is (Assistant) Secretary of _____

_____ a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its (Vice) President, sealed with its corporate seal, and attested by himself as its (Assistant) Secretary.

WITNESS my hand and notarial seal this _____ day of _____, 20____

Notary Public

My Commission Expires _____

Use the following form for acknowledgement signature by an individual.

NORTH CAROLINA

DARE COUNTY

I, the undersigned Notary Public, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this _____ day of _____, 20____

Notary Public

My Commission Expires _____

Date of Execution: _____

Name of Principal: (Contractor) _____

Sheet for Attaching Power of Attorney

Sheet for Attaching Insurance Certificate

PROCEDURE FOR REPORTING NORTH CAROLINA
SALES TAX EXPENDITURES ON TOWN OF SOUTHERN SHORES
CONTRACTS

1. The following procedure in handling the North Carolina Sales Tax is applicable to this project. Contractors shall comply fully with the requirements outlined hereinafter, in order that the owner may recover the amount of the tax permitted under the law.
2.
 - (a) It shall be the general contractor's responsibility to furnish the owner documentary evidence showing the materials used and sales tax paid by the general contractor and each of his subcontractors. Any county sales tax included in the contractor's statements must be shown separately from the state sales tax. If more than one county is shown, each county shall be listed separately.
 - (b) The documentary evidence shall consist of a certified statement, by the general contractor and each of his subcontractors individually, showing total purchases of materials from each separate vendor and total sales taxes by each county paid each vendor. The certified statement must show the invoice number(s) covered and inclusive dates of such invoices. State sales tax shall be listed separately from county sales tax. If more than one county is shown, each county shall be listed separately.
 - (c) Materials used from general contractor's or subcontractor's warehouse stock shall be shown in a certified statement at warehouse stock prices.
 - (d) The general contractor shall not be required to certify the subcontractor's statements.
 - (e) The documentary evidence to be furnished to owners eligible for sales or use tax refunds covers sales and/or use taxes paid on building materials used by contractors and subcontractors in the performance of contracts with churches, orphanages, hospitals not operated for profit, educational institutions not operated for profit, and other charitable or religious institutions or organizations not operated for profit and incorporated cities, towns, and counties in this State. The documentary evidence is to be submitted to the above-named institutions, organizations, and governmental units to be included in claims for refunds to be prepared and submitted by them to obtain refunds provided by G.S. 105-164.14 and is to include the purchases of building materials, supplies, fixtures, and equipment which become a part of or annexed to buildings or structures being erected, altered, or repaired under contracts with such institutions, organizations or governmental units.
3. The contractor or contractors to whom an award is made on this project will be required to follow the procedure outlined above.
4. The contractor is advised that all requests for payment, partial or final, for work completed under this contract must include a sales tax report submitted in accordance with the procedures outlined above.

(REQUIRED AT TIME OF FINAL PAYMENT)

AFFIDAVITTown of Southern Shores Project Name STREET IMPROVEMENT PROJECTSTown of Southern Shores Project No 22PAVEState of North CarolinaCounty of Dare

In the State of North Carolina, County of Dare, being duly sworn, deposes and says that they are _____ of _____ and that they have full and official knowledge of all and every debt and obligation for labor and materials which have entered into and become a part of the public facilities constructed under Town of Southern Shores Street Improvement Project and, acting in their official capacity, and for the specific purpose of obtaining the funds due on this final estimate, they further depose and say that all debts or obligations for such labor and materials have been fully and completely paid and discharged in good and lawful money of the United States of America or by evidence of exchange or trade acceptances endorsed and guaranteed by a solvent National or State bank, and that there are no suits for damages against the contractor, pending, prospective or otherwise, in consequence of their operations on the said project except as follows:

In witness whereof they have set their hand and seal,

I, _____, a notary public of the County and State aforesaid, hereby certify that _____ personally known to me to be the affiant in the foregoing affidavit, personally appeared before me this day and having been by me duly sworn, deposes and says that the facts set forth in the above affidavit are true and correct.

Witness my hand and official seal this the _____ day of _____, 20____

Notary Public

My Commission Expires:

(SEAL)

Contract No. _____
 County _____

Rev. 11-1-12

TOWN OF SOUTHERN SHORES
CONTRACT PERFORMANCE BOND

Date of Performance Bond Execution: _____

Name of Principal Contractor: _____

Name of Surety: _____

Name of Contracting Body: _____

Amount of Bond: _____

Contract ID No.: _____

County Name: _____

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL CONTRACTOR (hereafter, PRINCIPAL) and SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the Contracting Body, numbered as shown above and hereto attached:

NOW THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Contracting Body, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Contract No. _____
County _____

Rev. 11-1-12

CONTRACT PERFORMANCE BOND

Affix Seal of surety Company

Print or type Surety Company Name

By

Print, stamp or type name of Attorney-in-Fact

Signature of Attorney-in-Fact

Signature of Witness

Print or type Signer's name

Address of Attorney-in-Fact

Contract No. _____
 County _____

Rev. 11-1-12

CONTRACT PERFORMANCE BOND

CORPORATION

SIGNATURE OF CONTRACTOR (Principal)

 Full name of Corporation

 Address as prequalified

By _____

Signature of **President, Vice President, Assistant Vice President**
Select appropriate title

 Print or type Signer's name

Affix Corporate Seal

Attest _____

Signature of **Secretary, Assistant Secretary**
Select appropriate title

 Print or type Signer's name

Contract No. _____
County _____

CONTRACT PERFORMANCE BOND

LIMITED LIABILITY COMPANY

SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor

Full name of Firm

Address as prequalified

By:

Signature of Member, Manager, Authorized Agent
Select appropriate title

Print or type Signer's name

Contract No. _____
County _____

CONTRACT PERFORMANCE BOND

INDIVIDUAL DOING BUSINESS UNDER A **FIRM** NAME

SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor

Individual Name

Trading and doing business as

Full name of Firm

Address as prequalified

Signature of Contractor

Individually

Print or type Signer's name

Signature of Witness

Print or type Signer's name

Contract No. _____
County _____

CONTRACT PERFORMANCE BOND

INDIVIDUAL DOING BUSINESS IN HIS OWN NAME

SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor _____
Print or type Individual name

Address as prequalified

Signature of Contractor _____
Individually

Print or type Signer's name

Signature of Witness

Print or type Signer's name

Contract No. _____
County _____

CONTRACT PERFORMANCE BOND

PARTNERSHIP

SIGNATURE OF CONTRACTOR (Principal)

Full name of Partnership

Address as prequalified

By _____
Signature of Partner

Print or type Signer's name

Signature of Witness

Print or type Signer's name

Contract No. _____
 County _____

**CONTRACT PERFORMANCE BOND
 JOINT VENTURE (2) OR (3)
 SIGNATURE OF CONTRACTORS (Principal)**

Instructions to Bidders: 2 **Joint Ventures**, Fill in lines (1), (2) and (3) and execute. 3 **Joint Venturers** Fill in lines (1), (2), (3), (4) and execute. On Line (1), print or type the name of Joint Venture. On line (2), print or type the name of one of the joint venturers and execute below in the appropriate manner⁴ required by Article 102-8 of the *NCDOT Standard Specifications*. On Line (3), print or type the name of second joint venturer and execute below in the appropriate manner required by said article of the Specifications. On Line (4), print or type the name of the third joint venturer, if applicable and execute below in the appropriate manner required by said article of the Specifications. This form of execution must be strictly followed.

(1) _____
 Name of Joint Venture

(2) _____
 Name of Contractor

 Address as prequalified

 Signature of Witness or Attest By _____
 Signature of Contractor

 Print or type Signer's name _____
 Print or type Signer's name

If Corporation, affix Corporate Seal

and

(3) _____
 Name of Contractor

 Address as prequalified

 Signature of Witness or Attest By _____
 Signature of Contractor

 Print or type Signer's name _____
 Print or type Signer's name

If Corporation, affix Corporate Seal

and

(4) _____
 Name of Contractor (for 3 Joint Venture only)

 Address as prequalified

 Signature of Witness or Attest By _____
 Signature of Contractor

 Print or type Signer's name _____
 Print or type Signer's name

If Corporation, affix Corporate Seal

Contract No. _____
County _____

Rev. 4-19-11

CONTRACT PERFORMANCE BOND

Attach certified copy of Power of Attorney to this sheet

Contract No. _____
 County _____

TOWN OF SOUTHERN SHORES

CONTRACT PAYMENT BOND

Date of Payment Bond Execution _____

Name of Principal Contractor _____

Name of Surety: _____

Name of Contracting Body: _____

Amount of Bond: _____

Contract ID No.: _____

County Name: _____

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL CONTRACTOR (hereafter, PRINCIPAL) and SURETY above named, are held and firmly bound unto the above named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the Contracting Body, numbered as shown above and hereto attached:

NOW THEREFORE, if the principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Contract No. _____
County _____

CONTRACT PAYMENT BOND

Affix Seal of surety Company

Print or type Surety Company Name

By _____
Print, stamp or type name of Attorney-in-Fact

Signature of Attorney-in-Fact

Signature of Witness

Print or type Signer's name

Address of Attorney-in-Fact

Contract No. _____
County _____

CONTRACT PAYMENT BOND

CORPORATION

SIGNATURE OF CONTRACTOR (Principal)

Full name of Corporation

Address as prequalified

By _____
Signature of **President, Vice President, Assistant Vice President**
Select appropriate title

Print or type Signer's name

Affix Corporate Seal

Attest _____
Signature of **Secretary, Assistant Secretary**
Select appropriate title

Print or type Signer's name

Contract No. _____
County _____

CONTRACT PAYMENT BOND
LIMITED LIABILITY COMPANY
SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor

Full name of Firm

Address as prequalified

By: _____

Signature of Member, Manager, Authorized Agent
Select appropriate title

Print or type Signer's name

Contract No. _____
County _____

CONTRACT PAYMENT BOND

INDIVIDUAL DOING BUSINESS UNDER A **FIRM** NAME

SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor _____
Individual Name

Trading and doing business as _____
Full name of Firm

Address as prequalified

Signature of Contractor _____
Individually

Print or type Signer's name

Signature of Witness

Print or type Signer's name

Contract No. _____
County _____

CONTRACT PAYMENT BOND

INDIVIDUAL DOING BUSINESS IN HIS OWN NAME

SIGNATURE OF CONTRACTOR (Principal)

Name of Contractor _____
Print or type Individual name

Address as prequalified

Signature of Contractor _____
Individually

Print or type Signer's name

Signature of Witness

Print or type Signer's name

Contract No. _____
County _____

CONTRACT PAYMENT BOND

PARTNERSHIP

SIGNATURE OF CONTRACTOR (Principal)

Full name of Partnership

Address as prequalified

By _____
Signature of Partner

Print or type Signer's name

Signature of Witness

Print or type Signer's name

Contract No. _____
 County _____

CONTRACT PAYMENT BOND
JOINT VENTURE (2) or (3)
SIGNATURE OF CONTRACTORS (Principal)

Instructions to Bidders: **2 Joint Ventures**, Fill in lines (1), (2) and (3) and execute. **3 Joint Venturers** Fill in lines (1), (2), (3), (4) and execute. On Line (1), print or type the name of Joint Venture. On line (2), print or type the name of one of the joint venturers and execute below in the appropriate manner required by Article 102-8 of the *NCDOT Standard Specifications*. On Line (3), print or type the name of second joint venturer and execute below in the appropriate manner required by said article of the Specifications. On Line (4), print or type the name of the third joint venturer, if applicable and execute below in the appropriate manner required by said article of the Specifications. This form of execution must be strictly followed.

(1) _____
 Name of Joint Venture

(2) _____
 Name of Contractor

 Address as prequalified

 Signature of Witness or Attest

By

 Signature of Contractor

 Print or type Signer's name

 Print or type Signer's name

If Corporation, affix Corporate Seal

and

(3) _____
 Name of Contractor

 Address as prequalified

 Signature of Witness or Attest

By

 Signature of Contractor

 Print or type Signer's name

 Print or type Signer's name

If Corporation, affix Corporate Seal

and

(4) _____
 Name of Contractor (for 3 Joint Venture only)

 Address as prequalified

 Signature of Witness or Attest

By

 Signature of Contractor

 Print or type Signer's name

 Print or type Signer's name

If Corporation, affix Corporate Seal

Contract No. _____
County _____

CONTRACT PAYMENT BOND

Attach certified copy of Power of Attorney to this sheet

STATE OF NORTH CAROLINA
E-VERIFY AFFIDAVIT
TOWN OF SOUTHERN SHORES

NOW COMES Affiant, first being sworn, deposes and says as follows:

1. I have submitted a bid for contract or desire to enter into a contract with the TOWN OF SOUTHERN SHORES;

2. As part of my duties and responsibilities pursuant to said bid and/or contract, I attest that I am aware of and in compliance with the requirements of E-Verify, Article 2 of Chapter 64 of the North Carolina General Statutes, to include (mark which applies):

____ After hiring an employee to work in the United States I verify the work authorization of said employee through E-Verify and retain the record of the verification of work authorization while the employee is employed and for one year thereafter; or

____ I employ less than twenty-five (25) employees in the State of North Carolina.

3. As part of my duties and responsibilities pursuant to said bid and/or contract, I attest that to the best of my knowledge any subcontractors employed as a part of this bid and/or contract are in compliance with the requirements of E-Verify, Article 2 of Chapter 64 of the North Carolina General Statutes, to include (mark which applies):

____ After hiring an employee to work in the United States the subcontractor verifies the work authorization of said employee through E-Verify and retain the record of the verification of work authorization while the employee is employed and for one year thereafter; or

____ Employ less than twenty-five (25) employees in the State of North Carolina.

Specify subcontractor: _____

This the _____ day of _____, 20 ____.

Affiant

Sworn to and subscribed before me, this the _____ day of _____, 20 ____.

[OFFICIAL SEAL]

_____, Notary Public

My Commission Expires: _____

PREAUDIT CERTIFICATE

I, the undersigned, _____, the duly authorized and acting Finance Director of the Town of Southern Shores, do hereby certify as follows:

In accordance with N.C.G.S. § 159-28, this instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. Any obligation incurred in violation of this subsection is invalid and may not be enforced.

Signed and dated this _____ day of _____, 20_____

Signature

CERTIFICATE OF TOWN'S ATTORNEY

I, the undersigned, _____, the duly authorized and acting legal representative of the Town of Southern Shores, do hereby certify as follows:

I have examined the foregoing contract and surety bonds, if required, and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

Signed and dated this _____ day of _____, 20____

Signature

APPENDIX A

PROJECT STANDARD CONSTRUCTION SPECIFICATIONS

STANDARD CONSTRUCTION SPECIFICATIONS SOUTHERN SHORES

GENERAL REQUIREMENTS

1. DEFINITIONS AND ABBREVIATIONS

Unless otherwise defined in the Contract Documents, the following definitions and abbreviations shall apply whenever used. The words directed, required, permitted, ordered, requested, constructed, designated, considered, necessary, prescribed, approved, acceptable, satisfactory, or words of like import, refer to actions, expressions and prerogatives of the Engineer.

1.01 Definitions

Acceptance of Work - All work required by the Contract Documents will be considered accepted upon official action by the Town Council of the Town of Southern Shores. In order to qualify for acceptance, all work specified in the Contract Documents must be completed unless specifically deleted by Contract change orders.

Acts of God - An act of God is to be construed to mean an earthquake, flood, cloudburst, tornado, hurricane or other phenomenon of nature of catastrophic proportions or intensity.

Addenda - Supplemental written specifications or drawings issued prior to execution of the Contract which modify or interpret the Contract Documents by addition, deletion, clarification or correction.

Advertisement - The public announcement inviting bids for work to be performed or materials to be furnished.

Approved Equal - A product, component or process whose use in or on a particular project is specified as a standard for comparison purposes only. The "equal" product, component, or process, shall be the same or better than that named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the Engineer, pursuant to Subsection 6.07. Whenever a manufacturer's name brand or model is mentioned, it is to be understood that the phrase "approved equal" is assumed to follow thereafter, whether it does in fact or not.

Attorney - The Town Attorney of the Town of Southern Shores, North Carolina.

Bid - A Proposal.

Bid Bond - The bond required to be submitted with each Proposal, as described in the Proposal Form as a Proposal Guaranty, which assures that the Bidder will enter into a Contract if his Proposal is accepted.

Bidder - Any individual, firm, co-partnership, corporation, or combination thereof, submitting a Proposal in response to the advertisement calling for Bids on the work contemplated either directly or through a duly authorized representative.

Change Order - A written order, issued by Engineer to the Contractor, covering changes in either the Plans, specifications or quantities within the scope of the Contract after award and as further described in Subsections 4.05 and 4.06.

Contract - The written agreement covering the performance of the work and the furnishing of labor, materials, tools and equipment and construction of the work for the Project. The Contract shall include the Contract Documents, certificates of insurance (as specified in Section 7.06 below), and Performance Bond and Payment Bond (as specified in the Proposal Form); also any and all supplemental agreements amending or extending the work completed which may be required to complete the work in a substantial and acceptable manner. Supplemental agreements are written agreements covering alterations or amendments or extensions to the Contract and include Contract change orders.

Contract Documents – Those documents identified in Section 4.03.A.

Contract Item - A specific unit of work for which a price or basis of payment is provided in the Contract.

Contract Form – That certain document entitled “Contract for Sea Oats Trail” to be executed by and between the Town and Contractor after the award of the Contract to the Contractor but before work under the Contract begins.

Contract Price - Either the unit prices or lump sum price or prices named in the Proposal or in properly executed change orders.

Contract Time – This term is defined in Section 8.04, below.

Contract Review Board - The Town of Southern Shores Town Council is the Contract Review Board.

Contract Time - The number of days stated in the Contract Documents for the completion of the work.

Contractor - Any individual, firm, co-partnership, corporation or any combination thereof, who has or have entered into a Contract with the Town for a particular project. Unless context clearly requires otherwise, the term Contractor shall be deemed to refer to the Contractor who entered into the Contract to perform work under the Project.

Day - Unless otherwise designated, days as used in these Standard Specifications will be understood to mean working days. A working day is any and every day shown on the calendar, excluding Saturdays, Sundays and legal holidays.

Department of Public Works - The Department of Public Works of the Town of Southern Shores, North Carolina, acting directly or through properly authorized officials, employees and agents limited to the particular duties entrusted to them.

Easements - The right to use the property of another for a specific purpose or purposes as set forth in a document.

Engineer - The engineer or Environmental Permitting Consultant who represents the Owner, who shall perform his work under the direction of the Owner and, with the approval of the Town, may

perform such work through properly authorized officials, employees and agents limited to the particular duties entrusted to them.

Equipment - The machinery, accessories, appurtenances, and manufactured articles to be furnished and/or installed under the Contract.

Improvement - General term encompassing all phases of work to be performed under the Contract and is synonymous to the term project.

Inspector - The authorized representative of the Engineer whose instructions and decisions shall be limited to the particular duties and responsibilities entrusted to him and making detailed inspections of any or all portions of the work or materials therefore.

Lump Sum - A method of payment providing for one all-inclusive payment for the work described to be done, complete and accepted without further measurement, as such work is covered under the applicable lump sum pay item.

Notice - A written communication delivered by hand or by mail to the authorized individual, member of the firm, or officer of the corporation for which it is intended. If delivered or sent by mail, it shall be addressed to the last known business address of the individual firm or corporation. In the case of a Contract with two or more persons, firms, or corporations performing work under such Contract, notice to one shall be deemed notice to all.

NCDOT Standard Specifications - The latest addition of the Specification Document published by the State of North Carolina entitled Standard Specifications for Roads and Structures - North Carolina Department of Transportation. This document is available from the North Carolina Department of Transportation, Raleigh, North Carolina.

Owner - The Town of Southern Shores, Dare County, North Carolina, acting through its legally constituted Town Council. The term Owner is synonymous with the term Town.

Pavement - The uppermost layer of material placed on the traveled way or shoulders. This term is used interchangeably with surfacing.

Performance Bond and Payment Bond - The Bonds submitted by the Contractor and his surety, as specified in the Contract and as more fully described in the Proposal Form.

Plans - The official Project Plans and Standard Plans, profiles, cross-sections, elevations, details and other working supplementary detail drawings or reproductions thereof approved by the Engineer which show the location, character, dimensions, and details of the work to be performed. Plans may either be bound in the same book as the balance of the Contract Documents or bound in separate sets and all are a part of the Contract Documents regardless of the method of binding.

In the above definitions, the following terms are defined:

A) **Standard Plans** - Details of structures, devices, typical sections, or instructions adopted by Town as a standard and referred to in the Contract Documents.

B) **Project Plans** - Specific details and dimensions peculiar to the work and are supplemented by the Standard Plans insofar as the same may apply.

Project - General term encompassing all phases of the Work to be performed under the Contract and is synonymous to the term improvement.

Proposal - The offer of a Bidder, submitted on Owner's official Proposal Form, to perform stated work at the prices quoted in such Proposal. The term Bid is synonymous with the term Proposal.

Proposal Form - That certain document entitled "Proposal", which describes the procedures for bidding on the "Sea Oats Trail Improvement Project" and the possible awarding of a contract for said project, as said document is considered prior to completion by a Bidder.

Proposal Guaranty (Bid Bond) - The security furnished with a Proposal to ensure that the Bidder will enter into the Contract if his Proposal is accepted.

Provide - When related to an item of work, the word 'provide' shall be understood to mean furnish and install the work complete in place.

Reference Specifications - Bulletins, standards, rules, methods of analysis or test, codes and specifications of other agencies, engineering societies or industrial associations referred to in the Contract Documents. All such references specified herein refer to the latest edition thereof, including any amendments thereto which are in effect and published at the time of advertising for Bids, or of issuing the permit for the project.

Right-of-Way - A general term denoting public land, property or interest therein acquired for or devoted to a public street, public access or public use.

Roadway - That portion of the street and its appurtenances between curbs, gutters, or ditches primarily used for vehicular traffic.

Scheduled Closing Time - The time and date as set forth in the Request for Bids or any extensions thereof provided by addenda.

Shop Drawings - Supplementary plans or data which the Contract requires the Contractor to submit to the Engineer explaining equipment, methods and materials proposed for use.

Shown - As used herein, the word shown, or as shown, shall be understood to refer to work shown on the Plans in the Contract Documents.

Special Provisions - Requirements peculiar to the project and changes and modifications to the Standard Specifications.

Specifications - the Standard Specifications.

Specified - As used herein, the word specified or as specified means as required by the Contract Documents.

Standard Specifications - The terms, directions, provisions and requirements set forth herein.

Station - A distance of 100 feet measured horizontally along the established centerline of the street, sewer, waterway, canal or other work, unless specified otherwise.

Street - Any street, avenue, boulevard, alley, lane, bridge, bicycle path, road, public thoroughfare or public way and any land over which a right-of-way has been obtained or granted for the purpose of public travel.

Subcontractor - An individual, partnership, firm, corporation or any combination thereof to whom the Contractor sublets part of the Contract.

Surety - Any firm or corporation authorized in the State of North Carolina executing a surety bond or bonds payable to the Town securing the performance of the Contract either in whole or in part.

Ton - A short ton of 2000 lbs.

Town - The Town of Southern Shores, Dare County, North Carolina, acting through its legally constituted Town Council or, when so delegated or authorized, through its Owner. The term Owner is synonymous with the term Town

Unit Price - A Contract item of work providing for payment based on an existing unit of measurement; e.g. linear foot or cubic yard.

Use of Pronoun - As used herein, the singular shall include the plural, and the plural the singular; any masculine pronoun shall include the feminine or neuter gender; and the term 'person' includes natural person or persons, firms, co-partnerships, corporations, or associations or combinations thereof.

Utility - Tracks, overhead or underground wires, pipelines, conduits, ducts, or structures owned, operated or maintained in or across the public right-of-way or easement.

Work - All material, labor, tools, plant, vessels, equipment and all appliances, machinery, transportation or appurtenances necessary to perform and complete the Contract and such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated and as required by good practice to provide a complete and satisfactory system or structure.

1.02 ABBREVIATIONS

AAN American Association of Nurserymen

AASHTO American Association of State Highway and Transportation Officials

ACI American Concrete Institute

AGA American Gas Association

AED Associated Equipment Distributors

AGC Associated General Contractors of America

AIA American Institute of Architects

AISC American Institute of Steel Construction

AISI American Iron and Steel Institute

ANSI American National Standards Institute, Inc.

APWA American Public Works Association

ASCE American Society of Civil Engineers

ASLA American Society of Landscape Architects

ASME American Society of Mechanical Engineers

ASTM American Society for Testing and Materials

AWPA American Wood Preservers Association

AWS American Welding Society

AWWA American Water Works Association
 CRSI Concrete Reinforced Steel Institute
 DCM Division of Coastal Management NCDENR
 DWQ Division of Water Quality NCDENR
 EPA Environmental Protection Agency
 FHWA Federal Highway Administration, US Department of Transportation
 FSS Federal Specification and Standards, General Services Administration
 GS General Statutes of North Carolina
 ITE Institute of Traffic Engineers
 NEC National Electrical Code
 NEMA National Electrical Manufacturer's Association
 NLMA National Lumber Manufacturer's Association
 NCAC North Carolina Administrative Code
 NCDENR North Carolina Department of Environment and Natural Resources
 NCDOT North Carolina Department of Transportation
 OSHA Occupational Safety and Health Administration
 PCA Portland Cement Association
 UL Underwriter's Laboratories, Inc.
 USASI United States of America Standards Institute
 USACE United States Army Corp of Engineers

2. PROPOSAL REQUIREMENTS

The proposal requirements are contained the Proposal Form.

3. AWARD AND EXECUTION OF CONTRACT

Provisions relating to the award and execution of the Contract are provided in the Proposal Form.

4. SCOPE OF WORK

4.01 Scope of Work

- A. Road repairs, patching, and resurfacing improvements in accordance description in contract and typical sections in appendices.

4.02 Plans and Specifications

- A. Plans, Specifications and other Contract Documents will govern the work to be done. Anything mentioned in the Specifications and not shown on the Plans and typical sections, or anything shown on the Plans and not mentioned in the Specifications, shall be of like effect as though shown or mentioned in both. Specifications and Plans referred to in any of the Contract Documents shall be considered as being included in the document in which such reference is made. When a particular standard or specification is referred to in the Contract Documents, such reference shall be to the standard or specification including officially adopted revisions or amendments thereto which are in force at the time of advertising for Bids, unless otherwise provided, in writing, by the Town.

4.03 Precedence of Contract Documents

- A. The Contract shall be composed of each and every one of the following listed component parts and all approved revisions thereto (collectively, the "Contract Documents"):
1. Change Orders
 2. Contract Form
 3. Addenda to the Special Provisions
 4. Special Provisions
 5. Addenda to Standard Specifications
 6. Standard Construction Specifications
 7. Typical Sections
 8. Mapping of Road Locations
 9. Instructions to Bidders contained in the Proposal Form.
 10. Proposal

4.04 Conflict of Provisions

- A. In the event of any conflicting provisions or requirements between the component parts of this Contract, the component part having the lowest number, as established in Subsection 4.04 above, shall govern.
- B. Conflicting provisions or requirements in the Contract Documents shall in no way relieve the performance bond and public liability insurance of their respective and specific protection to the Contractor, provided, however, that the sequence provided in Section 4.04 does not conflict with the intent of or harm the product or work in any way. In case of such conflict which would alter the intent of or harm the product or work, the requirement which, in the opinion of the Engineer or Town, will result in the best product or work will govern. It is hereby agreed that the entire project shall be completed in accordance with the full intent of the Contract, regardless of conflicting statements, omissions, or errors. The intent of the drawings and Specifications is to outline and control the work in a manner necessary to result in the best completely finished product practicable, at a minimum cost, incorporating all items. Any omissions in the Plans and Specifications pertinent to the requirements of the specified items are unintentional. If such are found, the Contractor will be required to perform the work in a customary workmanlike manner to achieve the intent as stated above, and the Engineer or Town will make his or its decisions to be equitable to all concerned. To accomplish the intent of this Contract, the Contractor will be required to maintain adequate competent supervisory personnel on the project at all times, to be responsible for all work being done in accordance with the intent of the Plans and Specifications, whether or not the Engineer is, or is not, present. Should the Engineer or his authorized representative find faulty work on any item at any time in the Contract, he shall so inform the Contractor and the Contractor will be required to correct such work by completely removing and replacing, if necessary, all to the satisfaction of the Engineer or Town, and at no cost to the Owner.

- C. It shall be definitely understood that omissions of one or more of the documents comprising the Contract Documents shall not be construed as conflicting provisions. Any requirement given in one documents comprising the Contract Document shall be known to be binding as though it is repeated in all Documents alike. The intent of the Contract is to combine all requirements of all documents comprising the Contract Documents into one.

4.05 Changes in the Work

- A. The Engineer at the direction of the Owner may at any time, by written order, make changes in the Plans and/or Specifications and within the general scope thereof. These changes may be in the Contract or result in addition to or deduction from the work to be performed, or the materials to be furnished pursuant to the Contract. Estimated quantities in the Proposal are primarily for bid purposes. No employee, agent, or representative of the Town, with the exception of the Owner, has any power to approve any change in the Contract, and it is the responsibility of the Contractor, before proceeding with any change, to satisfy himself that the change has been properly authorized by the Engineer. No change for any extra work, or any other change in the Contract, will be allowed unless the extra work or change has been authorized in writing by the Owner and the price, therefore, is stated in such a written authority, provided however, that the Engineer may, in the case of an emergency, authorize changes in the field. In no case shall any payment be made for any changes without first the written change order being agreed to and signed by both the Contractor and the Owner. Nothing provided herein shall excuse the Contractor from proceeding with the prosecution of the work as changed. Except as otherwise herein provided, no charge for extra work or materials will be allowed.
- B. The estimate of quantities of work to be done is tabulated in the Proposal and, although stated with as much accuracy as possible, is approximate only and is assumed solely for the basis of calculation upon which the award of Contract shall be made. Payment to the Contractor will be made on the measurement of the work actually performed by the Contractor as specified in the Contract Documents. The Owner reserves the right to increase or diminish the amount of any class of work as may be deemed necessary.
- C. If the actual quantity of any unit item as stated in the Proposal increases or decreases by 25 percent or less, payment for the actual quantity shall be made at the unit price stated in the Proposal. If the actual quantity of any unit item is less than 75 percent of the quantity stated in the Proposal, the Contractor may request, with appropriate documentation, a negotiation of the unit price for that item. Such negotiation shall be at the sole discretion of the Owner. If the actual quantity of any unit item is more than 125 percent of the quantity stated in the Proposal, the Owner may require an equitable reduction of the unit price for that item and the Contract shall be modified accordingly.

4.06 Changed Conditions

- A. The Contractor shall notify the Engineer of changed work site conditions upon their discovery and before they are disturbed. If the Engineer is not given written notice, the Contractor will be deemed to have waived any claim or claims for extra

compensation in any manner arising out of the changed or unusual conditions. Changed conditions are as follows:

- 1) Subsurface or latent physical conditions differing materially from those represented in the contract; or,
 - 2) Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work.
- B. The Engineer will promptly investigate all changed conditions. If the Engineer determines that the changed conditions will materially increase or decrease the costs of any portion of the work, the Owner will make an equitable adjustment in the amount of compensation to be paid for the performance of that part of the work involved, the time required, or both. If the Engineer determines that the changed conditions do not justify an adjustment in compensation, and the contractor disagrees with the Engineer's determination, the contractor may submit a written notice of dispute to the Engineer.
- C. In any event, the Contractor shall not be relieved from his obligations to resume construction operations pending a decision as to the validity of a claim, or pending the execution of negotiated agreement to cover additional costs of a claim recognized under the provisions of this section, unless permitted to do so by Owner.

4.07 Disputed Work

- A. If the Contractor considers that a part of the required work is outside the scope of the Contract, or considers any decision of the Engineer to be unfair, or otherwise has a dispute with regard to the performance under the Contract, the contractor shall:
- 1) immediately give oral notice to the Engineer and Owner;
 - 2) before performing the work at issue, obtain a written order from the Owner;
 - 3) within 24 hours of receiving the written order, confirm the notice of dispute in writing; and
 - 4) within ten calendar days after receipt of the written order, file a written protest with the Owner stating clearly and in detail the basis of dispute, and include an itemized statement of any extra costs which have resulted or would result from the disputed work.
- B. If the Contractor fails to comply with the above procedure, the Owner's ruling shall be final and conclusive and the Contractor shall have no claim for additional compensation or time.
- C. Although not to be construed as proceeding under extra work provisions, the Contractor shall keep and furnish records of all disputed work.
- D. Resolution of claims shall be per specification section 7.10 DISPUTE SETTLEMENT.

4.08 Extra Work

- A. The Owner shall have the right to require, and the Contractor agrees to do, extra work over and above that which is indicated by the Contract Documents and covered by the unit prices of the Contract or negotiated price or prices, which logically forms a part of the Contract, arising from reasonably unforeseeable conditions, changed requirements or new information. Such additional work shall be undertaken only upon written instructions from the Owner. Payment for extra work will be made pursuant to Subsection 9.07.

5. CONTROL OF WORK

5.01 Authority of and Coordination between the Owner and Engineer

- A. The Contractor shall perform all work to the satisfaction of the Engineer and Owner. The Contract and Specifications give the Owner authority over the work. For the purpose of determining the Contractor's duties, liabilities or entitlement to compensation or liability for damages, the decision of the Owner will be final on all questions including, but not limited to, the following:
 - 1) Quality and acceptability of materials and work;
 - 2) Classification and measurement of unit price work;
 - 3) Acceptability of rates of progress on the work;
 - 4) Interpretation of plans and specifications;
 - 5) Fulfillment of the Contract by the Contractor; and,
 - 6) Payments under the Contract.
- B. The Contractor shall at all times carry out and fulfill the instructions and directions of the Engineer or Owner, as applicable, relative to the work.
- C. Upon failure on the part of the Contractor to comply with any reasonable order made under the provisions of Contract, the Owner shall have the authority to cause unacceptable work to be remedied or removed and replaced, and unauthorized work to be removed and to deduct the cost thereof from any monies due or to become due the Contractor.
- D. The Owner has the authority to suspend work for causes set forth in Section 8, particularly Subsection 8.05.
- E. The work will not be considered complete until it has passed final inspection by the Engineer and is accepted by the Owner and met warranty requirements. Interim approval of the work by the Engineer during progress of the work signifies favorable opinion and qualified consent; it does not carry with it certification, assurance of completeness, assurance of quality, or assurance of accuracy concerning details, dimensions, and quantities. Such approval will not relieve the Contractor from responsibility for errors, for improper fabrication, for failure to conform to requirements, or for other deficiencies.
- F. The Engineer shall have authority to make decisions with regard to the Project to the extent that those decisions relate to the technical aspects of the work to be

performed under the Contract. Notwithstanding the foregoing, the Town hereby reserves the right to review and revise any decision made by the Engineer with regard to the Project, the Contract, or the Contract Documents.

- G. Notwithstanding any other provision contained in these Specifications, the Town shall retain authority to make decisions with regard to the Project, the Contract, or the Contract Documents, including, without limitation, the interpretation of conflicting provisions in the Contract Documents, the decision as to whether to enforce provisions of the Contract Documents, and whether to make payment to the Contractor. In making any decision related to the Project, the Contract, or the Contract Documents, the Town may, in its sole discretion, consult with the Engineer or any other person or entity.

5.02 Authority and Duties of Inspectors

- A. Inspectors have the authority to:
 - 1) Inspect all work done and materials furnished including preparation, fabrication, or manufacture of materials to be used;
 - 2) Report to the Engineer or Owner about the progress of the work and the manner it is performed;
 - 3) Report to the Engineer or Owner and notify the Contractor when materials furnished or work performed by the Contractor fail to meet the requirements of the plans and specifications; and
 - 4) Perform such other tasks that may be delegated by the Owner or Owner.
- B. Inspectors are not authorized to:
 - 1) Accept work; or,
 - 2) Alter or waive the provisions of the Contract.
- C. Failure of the Inspector or Engineer to call the attention of the Contractor to faulty work or infringements upon Plans or Specifications shall not constitute acceptance of said work.

5.03 Inspection

- A. The Contractor shall allow the Engineer or Owner every reasonable facility necessary to obtain information about type and quality of materials used in the work, methods used to complete the work, and progress of the work. The Engineer and the inspector shall be allowed access to all parts of the work to ascertain whether or not the work is performed in accordance with the requirements and intent of the Contract.
- B. The Contractor shall furnish, at no expense to the Owner, samples required for testing purposes. The Contractor shall, at any time before final acceptance of the work, remove or uncover portions of the work as directed by the Engineer or Owner. The Contractor shall restore the portions of the work to the standard required by the Contract. If the exposed work is acceptable, the uncovering and restoring of the work will be paid for as extra work. If the exposed work is unacceptable, the uncovering and restoring of the work shall be at the expense of the Contractor. Any work done or materials used without approval of the Engineer or Owner may be ordered removed and replaced at no expense to the Owner.

- C. When the work affects or may affect property of any other unit of government, political subdivision, utility, or railroad corporation, representatives of that organization shall have the right to inspect the work. Such inspection shall not make any other unit of government, political subdivision, utility, or any railroad corporation a party to the Contract and shall not interfere with the rights of the parties of the Contract.

5.04 Authority of Contractor

- A. The Contractor shall notify the Owner, Owner and Engineer in writing of the name, address and telephone number (day and night) of his superintendent who will act as the Contractor's representative and who shall have the authority to act in all matters relating to this Contract. The superintendent shall have full authority to carry out all the provisions of the Contract and to supply materials, equipment, tools and labor without delay for the performance of the work. The Contractor shall also submit in writing to the Owner a résumé of the superintendent's qualifications, years of experience and names of other projects on which he worked in a supervisory capacity. The Contractor shall not remove or replace the superintendent without two weeks prior notice thereof to the Engineer and Owner. The Contractor will supervise and direct the work. He has the authority to determine the means, methods, techniques, sequences and procedures of construction, except in those instances where Owner specifies in the Contract, a means, method, technique, sequence or procedure for construction of that item of work.
- B. Subcontractors will not be recognized as having a direct relationship with the Owner. All persons engaged in the work including employees of subcontractors and suppliers will be considered as employees of the Contractor and their work shall be subject to the provisions of the Contract. References in the Contract Documents to actions required of subcontractors, manufacturers, suppliers or any person other than the Contractor, the Owner or the Engineer shall be interpreted as requiring that the Contractor shall cause such subcontractor, manufacturer, supplier or person to perform the specified action.

5.05 Responsibility of the Contractor

- A. It is the responsibility of the Contractor to do all work and furnish all labor, materials, equipment, tools, and machines necessary for the performance and completion of the project in accordance with Contract Documents within the specified time. Materials and construction details built by the Contractor but not a part of the permanent project, shall meet approval of the Engineer, but such approval shall not relieve the Contractor from responsibility for their safety and efficiency.
- B. The Owner shall not be liable or responsible for any accident, loss, or damage happening to work referred to in the Contract Documents prior to completion and acceptance thereof.

- C. The Contractor shall at all times be responsible for the adequacy, efficiency and sufficiency of subcontractors, manufacturers, suppliers and their employees. All subcontractors, manufacturers and suppliers must have sufficient knowledge, skill and experience to perform properly the work awarded to them.
- D. The Contractor shall at all times be responsible for the adequacy, efficiency and sufficiency of his employees. All workers must have sufficient knowledge, skill and experience to perform properly the work assigned to them.
- E. The Contractor, acting through his superintendent, shall give personal attention to and shall manage the work to the end that it shall be prosecuted faithfully. When the superintendent is not personally present at the job site, his previously designated representative shall be available and shall have the authority to act on the Contract.
- F. The Contractor alone shall at all times be responsible for the safety of his and his subcontractor's employees. The Contractor shall maintain the job site and perform the work in a manner which meets the Owner's and Contractor's responsibility under statutory and common law for the provision of a safe place to work.
- G. The Contractor shall at all times conduct his work so as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work and to insure the protection of persons and property. No road or street shall be closed to the public except with the permission of the Engineer, Owner and proper governmental authority. Fire hydrants on or adjacent to the work shall be kept accessible to firefighting equipment at all times. Temporary provisions shall be made by the Contractor to insure the use of sidewalks, private and public driveways and proper functioning of all gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses.
- H. The Contractor shall adopt a written safety program complying with the requirements for employee and public safety set forth herein above. Four (4) copies of the Contractor's safety program shall be submitted to the Engineer and Owner. Adoption of and compliance with such program and submission of the copies thereof to the Engineer and Owner shall be a condition precedent to the Contractor's right to receive progress payments.
- I. The Contractor shall maintain books, records (including but not limited to financial records), and other evidence and documents pertinent to the performance of the work under this Contract in accordance with generally accepted principles and practices.
- J. The Contractor will provide proper facilities to the Owner for access, inspection, and copying at all times. The books, records documents, etc. to be maintained under this paragraph shall be maintained and made available during performance of the Contract and for three (3) years after completion of the work, or settlement of any claims arising thereon, whichever is later.

- K. The Owner's access to such records is not limited to the required retention periods. The Owner and its authorized representative shall have access to such records at any reasonable time for as long as the records are maintained.
- L. The Contractor shall perform the work in accordance with currently approved methods and practice in the Contractor's professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.
- M. The Contractor shall act as an independent contractor and is not an employee, subcontractor, agent, servant, partner nor joint venture of the Town. The Contractor has the right to use its best judgment and efforts to fulfill the terms and obligations of the Contract Documents. Contractor shall further agree and acknowledge the following:
 - (1) Contractor will receive no compensation other than that agreed to by the parties as bid by the Contractor plus any compensation agreed to in subsequent change orders and the Contractor, its agents, employees and subcontractors are not subject to nor eligible for any benefits which may be offered by the Town to its employees, such as vacation pay, sick leave, insurance coverage or retirement plan participation. Any such benefits offered by the Contractor shall be the Contractor's sole responsibility.
 - (2) The services to be provided by the Contractor are an independent calling or occupation.
 - (3) The Contractor is expected to use its own skill, judgment and expertise to fulfill its obligations, and is not supervised, directed or controlled by the Town as to the means or methods it should employ except that the Contractor follow the Contract Documents.
 - (4) The Contractor is not required to perform tasks in particular order or sequence, except as provided in the Contract Documents.
 - (5) The Contractor needs no training from the Town as to how to fulfill its duties and responsibilities.
 - (6) The Contractor may determine its own daily schedule and those of its own employees or servants without prior approval of the Town.
 - (7) The Contractor is not required to devote any particular percentage of its time or resources to perform the services required hereunder.
 - (8) The Contractor shall furnish its own equipment and supplies.
 - (9) Although the Contractor may be provided the use of the Town's facilities, such use is provided merely to facilitate the Contractor's coordination with the Town's staff and communication with vendors, other contractors engaged on the project, and members of the community.
 - (10) To the extent the Contractor must procure or maintain any insurance, license, certification or trade membership, it must do so at its own cost.

(11) The Contractor shall not be prevented from performing other services for other parties. Contractor may engage in other business endeavors or projects of any kind as long as such activities do not conflict with the Contractor's relationship with the Town as defined hereunder.

- N. The Contractor shall read and review all plans, specifications and supporting documents attached to these specifications within the Appendix.

5.06 Notifications Relative to Contractor's Activities

- A. The Contractor shall take special notice of Subsection 5.05. The Contractor shall obtain prior approval from the Owner for closing or partial closing of any street. The Contractor shall, without exception, notify the Fire Department, Police Department, ambulance services, U. S. Postal Service, garbage services, and Dare County Schools when closing any street, or portion thereof, in the Town of Southern Shores for any purpose.
- B. Said notice shall include the limits and approximate duration of the closure. The Contractor shall promptly notify said departments when the streets are again passable for emergency vehicles.
- C. The Contractor shall also cause the least inconvenience possible to businesses, property owners and residents. Each business and residence shall be given an approved, printed notice of a pending closure. Ample time shall be allowed for the movement of vehicles away from the project. In emergencies, Contractor shall notify businesses and residents directly and assist them in leaving the area as needed.
- D. The Contractor shall leave his night emergency telephone number or numbers with the Chief of Police so that contact may be made easily at all times in case of barricade trouble or other emergencies.
- E. Contractors shall request on-site utility locations in accordance with the laws governing utility locations prior to the commencement of work.
- F. When performing work in streets and easements, whether inside or outside Owner's legal boundaries, the Contractor shall notify all of the affected local agencies about the operations so as to properly coordinate and expedite the work in such a manner as to cause the least amount of conflict and interference between the operations and those of other agencies.
- G. Notifications shall include, but not be limited to, the time of commencement and completion of work, names of streets or locations of alleys to be closed, schedule of operations and routes of detours where possible.
- H. Any or all damages or claims resulting from improper or insufficient notification of the affected agencies shall be the responsibility of the Contractor.
- I. Subject to the provisions of Section 5.07, Owner shall relocate or cause to be relocated all privately or publicly owned utility conduits, lines, poles, mains, pipes

and such other facilities within the jurisdiction and control of Owner where such relocation is necessary in order to conform said utility and other facilities to the plans and ultimate requirements of the project.

5.07 Utilities and Existing Improvements

- A. The right is reserved to governmental agencies and to owners of utilities to enter at any time upon any street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the work and for the purpose of maintaining and making repairs to their property.
- B. While performing the Work, the Contractor shall be held responsible for: any damage by Contractor or its subcontractor(s) or agent(s) to, maintenance for, and protection of existing utilities and structures.

5.08 Cooperation Between Contractors

- A. The Owner reserves the right to contract for and perform other or additional work on or near the work covered by this Contract.
- B. When separate contracts are let within the work area, each contractor involved will submit a realistic progress schedule for the Owner's approval. Each party shall have the right to review all schedules. After consultations with the contractors, the Owner will determine acceptable schedules.
- C. Each contractor involved shall assume all liability in connection with the Contract and shall protect and save harmless the Owner from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by the Contractor due to the presence and operations of other contractors working on or near the same project.
- D. The contractor shall arrange the work and shall place and dispose of the materials being used so as not to interfere with the operations of other contractors on or near the same project.
- E. When a dispute arises between two or more contractors engaged on work in the same or adjacent areas as to the respective rights of each, the Owner, or, if directed by the Owner, the Engineer will determine the matters at issue and define the respective rights of the various interests involved. The Owner's decision shall be final and binding on all parties concerned.
- F. If the contract gives notice of other work that may affect the work of this Contract, the coordination of the work shall be taken into account by the Contractor, and any resulting costs shall be considered incidental work.
- G. In an emergency, the contractor that is immediately accessible may make repairs to a facility or utility of another contractor.

5.10 Protection of Property

- A. The Contractor shall protect all public and private property insofar as it may be endangered by operations and take every reasonable precaution to avoid damage to such property.
- B. The Contractor shall restore and bear the cost of any public or private improvement, facility or structure within the right-of-way or easement which is damaged or injured directly or indirectly by or on account of any act, omission, or neglect in the execution of the work. The Contractor shall restore any damaged public or private improvement to a condition as good or better than that existing before such damage or injury occurred by repairing, rebuilding, or otherwise effecting restoration thereof, or if this is not feasible, makes a suitable settlement with the Owner of the damaged property, all at no expense to the Owner.
- C. The Contractor shall give reasonable notice to occupants of buildings on property adjacent to the work to permit occupants to remove vehicles, boats, trailers, and other possessions, as well as salvage or relocate plants, trees, fences, sprinkler systems, or other improvements in the right-of-way, which are designated for removal or which may be destroyed or damaged by work operations.
- D. The Contractor shall protect all designated trees and planted areas within the right-of-way or easements. He shall also exercise care and conduct operations so as to minimize damage to new planted areas.

5.11 Protection of Work

- A. Until acceptance of the project, the Contractor shall at all times protect from damage and preserve all materials, supplies, equipment of any description, and all work already performed, from the nature of the work, the action of the elements, and damage by any person or persons or from any other cause whatsoever.

5.12 Use of Improvement During Construction

- A. Upon request and with approval of the Owner, or upon order of Owner, Contractor will be relieved of the duty of maintaining and protecting certain portions of work which are approved to be placed in service and which have been completed in accordance with the Contract Documents, including cleanup.
- B. Owner shall have the right to take possession of and use any completed or partially completed portions of the improvement. Such use shall not be considered as final acceptance of the improvement or portions thereof.
- C. In addition, such action by Owner will relieve the Contractor of responsibility for injury or damage to said completed portions of work resulting from use by public traffic or from the action of the elements or from any other cause, except injury or damage resulting from Contractor's own operations or from his negligence. Contractor will not be required to again clean up such portions of the improvement prior to field acceptance, excepting for such items of work as result from his operations. However, nothing in this section shall be construed as relieving

Contractor from full responsibility for making good work or materials found to be defective.

5.13 Verbal Agreements

- A. No verbal agreement or conversation with any officer, agent or employee of the Owner, either before or after execution of the Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract. Any such verbal agreement or conversation shall be considered as unofficial information and in no way binding upon Owner.

5.14 Dust, Noise and Pollution Control

- A. The Contractor shall conduct the work in accordance with local laws and ordinances and all regulations of the NCDENR other agencies of the state, and with all laws and regulations of the federal government and in accordance with subsection 7.01. All practicable means shall be exercised to prevent, control and abate the pollution of waters and to maintain reasonable purity of the air. The Contractor shall abate dust nuisance by cleaning up, sweeping, sprinkling with water, or other means as necessary to accomplish the suppression of dust.
- B. The Contractor shall conduct the work in conformity to all applicable laws and regulations governing construction noise.

5.15 Temporary Traffic Control

- A. The Contractor shall provide and be responsible at all times for such flag persons, signs and other devices not otherwise specified to be furnished by the Owner, in conformance with the language below:
 - 1. The Contractor shall maintain traffic flow during construction and shall provide, install, and maintain all traffic control devices in accordance with these project guidelines, the Project Special Provisions, North Carolina Department of Transportation Standard Specifications for Roads and Structures 2012, and the current edition of the Manual of Uniform Traffic Control Devices (MUTCD).
 - 2. The Contractor shall utilize complete and proper traffic controls and traffic control devices during all operations. All traffic control and traffic control devices required for any operation shall be functional and in place prior to the commencement of that operation. Signs for temporary operations shall be removed during periods of inactivity. The Contractor is required to leave the project in a manner that will be safe to the traveling public and which will not impede motorists. All traffic control devices shall be provided and maintained by the Contractor as in Section 1105 of the Standard Specifications.
 - 3. Traffic movements through lane closures on roads with two way traffic shall be controlled by flaggers stationed at each end of the work zone. In situations where sight distance is limited, the Contractor shall provide additional means of controlling traffic, including, but not limited to, two-

way radios, pilot vehicles, temporary traffic signals, or additional flaggers. Flaggers shall be competent personnel, adequately trained in flagging procedures, and furnished with proper safety devices and equipment, including, but not limited to, safety vests and stop/slow paddles.

4. All personnel when working in traffic areas or areas in close proximity to traffic shall wear an approved safety vest, or shirt or jacket which meets the color requirements of the Manual 21 Uniform Traffic Control Devices. (MUTCD).
 5. The Contractor shall comply with all applicable regulations including, but not limited to, Federal, State, and local laws, ordinances, and regulations governing safety, health, and sanitation, and shall provide all safeguards, safety devices, and protective equipment, and shall take any other needed actions, on his own responsibility that are reasonably necessary to protect the life and health of employees on the job and the safety of the public, and to protect property in connection with the performance of the work covered by the contract. Failure to comply with any of the requirements for safety and traffic control of this contract shall result in suspension of work as provided in sub article 108-7(2) of the Standard Specifications.
- B. Upon failure to immediately provide the necessary flag persons, or to provide, erect, maintain, and remove barricades, lights, and standard signs when so ordered, Engineer or Owner shall suspend work until such person(s) are available and working on the project.

5.16 Removal of Unacceptable or Unauthorized Work

- A. If the Engineer or Owner finds the work performed is not in conformance with the Contract, the Engineer or Owner may:
 - 1) Reject the work and have it replaced or otherwise corrected by the Contractor at no expense to the Owner, or;
 - 2) Accept the work as suitable for the intended purpose, document the basis of acceptance, and adjust the amount paid to the Contractor.
- B. The Owner's judgment concerning acceptability of work will be final. Unacceptable work found before final acceptance of the work shall be corrected or removed as directed by the Owner and replaced by work and materials conforming to the requirements of the Contract.
- C. Unauthorized work will not be paid for and may be ordered removed at the Contractor's expense.
 1. Unauthorized work is:
 - a) Work done beyond the Plans or established by the Engineer or Contract Documents;
 - b) Work done contrary to the Engineer's or Owner's instructions; or,
 - c) Work done without the Engineer's or Owner's written authorization.

- D. If, when ordered by the Engineer or Owner, the Contractor fails to correct or remove unacceptable work or to remove unauthorized work, the Engineer or Owner may have the correction or removal and replacement done by others. The cost shall be borne by the Contractor and may be deducted from payments due or to become due to the Contractor.

5.17 Restoration and Cleanup

- A. Periodically, or as directed by Engineer or Owner, as the work progresses, and immediately after completion of the work, Contractor shall clean up and remove all refuse, debris, equipment and unused materials of any kind resulting from the work. Upon failure to do so within twenty-four hours after directed, the work may be done by Owner or third party and the cost thereof be deducted from any payment due Contractor.
- B. As a condition precedent to final acceptance of the project, all equipment and temporary structures, and all rubbish and waste shall be removed and the right-of-way and premises shall be generally cleaned up to conform substantially to conditions as they existed before the commencement of work, as approved.

5.18 Final Inspection

- A. When all on-site construction work on the project is completed, the Contractor shall notify the Engineer and Owner in writing that the project is ready for final inspection. The Engineer and Owner will make an inspection within 15 calendar days of receiving notification. The Engineer or Owner will notify the Contractor, in writing, within ten calendar days thereafter. If all construction work required by the Contract is found complete and satisfactory, this inspection will constitute the final inspection.
- B. If any work is found incomplete or unsatisfactory, the Engineer will give written instructions, at the direction of the Owner, as to what shall be done to satisfactorily complete the work. After complying with such instructions, the Contractor shall follow the above procedures of notification, requesting a final inspection.
- C. The Engineer will issue a notice to the Contractor when all the following work is satisfactorily completed.
 - 1) All work required under the contract;
 - 2) All change order work;
 - 3) The final trimming and cleanup work; and,
 - 4) All required certifications, bills, forms, and other documents are received from the Contractor including:
 - Consent of Surety
 - Lien Waivers
 - Warrantee

5.19 Final Acceptance

- A. After final inspection of all work is made, and the work is found acceptable, the Owner will make final acceptance of the work under the Contract.

- B. The Contractor will be notified, in writing, within ten calendar days after final acceptance of the work.

6. CONTROL OF MATERIALS

6.01 Quality of Materials

- A. Only new materials, parts, products and equipment which conform to specified requirements shall be used in the work, unless directed by the Engineer or Owner, the Proposal and Special Provisions to salvage and reuse existing materials. Materials and products which after approval have become unsuitable or unacceptable for use, regardless of cause, will be rejected by the Engineer or Owner and shall not be used.

6.02 Sampling and Testing

- A. Tests of materials will be made by Owner in accordance with methods described or designated in the applicable Specifications, and at any time during the production, fabrication, preparation and use of the materials.
- B. Owner reserves the right to require samples and to test products for compliance with pertinent requirements irrespective of prior certification of the products by the manufacturer thereof as set forth in Subsection 6.03.
- C. When tests of materials are necessary, as determined by the Engineer, such tests will be made by and at the expense of Owner unless otherwise specified. The Contractor shall afford such facilities as required for collecting and forwarding samples where practical and withhold from use the materials represented by the samples until tests have been made and materials found equal to requirements of the Specifications or to approved samples. In all cases the required samples shall be furnished without charge and in ample time to permit testing of materials prior to use. No claim will be allowed for any delay caused by awaiting test results. Safety measures and devices to protect those who take the samples shall be provided.
- D. In the absence of any reference Specification, it shall be understood that such materials shall meet the specifications and requirements of the American Society for Testing and Materials (ASTM), or the American Association of State Highway and Transportation Officials (AASHTO), as directed by the Engineer. When there is no pertinent coverage under ASTM or AASHTO, the material concerned shall meet specifications and requirements of applicable commercial standards of the Commodity Standards Division of the U.S. Department of Commerce. Lacking such coverage, materials shall meet requirements established by reputable industry for a high-quality product of the kind involved.
- E. All testing shall be performed by or handled through a testing laboratory as directed by the Engineer and Owner.
- F. In the event Owner requests tests and the materials fail, the Contractor shall bear all costs for all subsequent testing necessary to meet specified requirements.

6.03 Certification

- A. For commercial products inclusive of industry standardized products, in lieu of normal sampling and testing procedures by the Contractor and Owner, the Engineer may accept from Contractor two copies of the manufacturer's certification with respect to the product involved, under conditions set forth as follows:
1. Certification shall state that the named product conforms to Owner's requirements and that representative samples thereof have been sampled and tested as specified.
 2. Certification shall either be accompanied with a certified copy of test results, or certify that such test results are on file with the manufacturer and will be furnished to Engineer upon request.
 3. Certification shall give the name and address of the manufacturer, the testing agency and the date of tests; and shall set forth the means of identification which will permit field determination of the product delivered to the project as being the product covered by the certification.
 4. Owner will not be responsible for any costs of certification or for any costs of the sampling and testing of products in connection therewith.

6.04 Inspection Requirements

- A. Access to Engineer, Owner or his representatives shall be allowed to all parts of the work and to plants of manufacturers at all times. The Contractor shall furnish them with every reasonable facility for ascertaining if the work meets requirements and intent of the Contract Documents. All samples required for testing purposes shall be furnished at no expense to Owner.

6.05 Inspection By Others

- A. Inspection of work by persons other than representatives of the Owner will not constitute inspection by Owner, except as set forth in Section 6.03.

6.06 Storage and Protection of Materials

- A. Materials shall be stored to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the right-of-way may be used for storage purposes, including Contractor's equipment, but any additional space required therefore shall be provided by Contractor at his expense. Private property shall not be used for storage purposes without written permission of the property owner or lessee. When requested, copies of such written permission shall be furnished to the Engineer and Owner.

6.07 Trade Names, Approved Equals or Substitutions

- A. In order to establish a basis of quality, certain processes, types of machinery or equipment or kinds of materials may be specified either by description of process or by designating a manufacturer by name and referring to his brand or product designation, or by specifying a kind of material. It is not the intent of these Specifications to exclude other processes, equipment or materials of equal value, utility or merit.
- B. Whenever a process is designated or a manufacturer's name, brand, or item designation is given or whenever a process or material covered by patent is designated or described it shall be understood that the words 'or approved equal' follow such name, designation or description, whether in fact they do so or not.
- C. If it is desirable to furnish items of equipment by manufacturers other than those specified as a substitute after the Contract is executed, approval shall be secured prior to placing a purchase order or furnishing same.
- D. If the Proposal includes a list of equipment, materials or articles for which Contractor must name the manufacturer at time of submission of the Bid, no substitutions therefore will be permitted after a Proposal has been accepted, without the express consent of Owner.
- E. The Contractor shall assume full responsibility for all expenses involved in making any required changes in the Contract Documents to accommodate a substitution approved by the Engineer and Owner for the convenience of Contractor, or to circumvent any unforeseen difficulty in obtaining a specified article.

7. LEGAL RELATIONS AND RESPONSIBILITIES

7.01 Laws and Regulations

A. General

- 1. The Contractor shall keep fully informed of all Federal and State laws, ordinances and regulations, and all orders and decrees or bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of work. All such laws, ordinances, regulations, orders and decrees shall be observed and complied with. The Contractor shall protect and indemnify Owner and his representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order or decree, whether by Contractor, his Subcontractors, suppliers of materials or services, or others engaged by the Contractor, or their employees.
- 2. Attention is directed to the General Statutes of the State of North Carolina for public contracts and public works contracts.

B. Protection of the Environment

1. The Contractor's attention is directed to GS, NCAC and all project permits for dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the work. Any unforeseen work relating to the prevention of environmental pollution, or the preservation of natural resources shall be considered the responsibility of the contractor.
2. The Contractor shall conduct operations in conformity to the applicable sections of NCAC, laws amendatory thereto, and all pertinent regulations of the NCDENR and other agencies of the state and the federal government, as well as ordinances or resolutions enacted or adopted by local authorities.
3. It is public policy that all practicable means be exercised to prevent, control, and abate the pollution of waters of the state, and to maintain reasonable purity of the air by the control or abatement of air pollution.
4. The Contractor shall exercise every reasonable precaution throughout the life of the Contract to safeguard the air resources of the state by controlling or abating air pollution.
5. Federal, state, and local agencies having a responsibility and/or jurisdiction relating to the environment include, but are not limited to, the following agencies:

U.S. Department of Agriculture
 U.S. Department of Health and Human Services
 U.S. Environmental Protection Agency
 U.S. Corps of Engineers
 U.S. Coast Guard
 U.S. Department of Labor
 North Carolina Department of Environmental Quality
 Division of Energy, Minerals & Land Resources
 Division of Water Resources
 Division of Coastal Management
 Division of Air Quality
 Division of Marine Fisheries
 Division of Waste Management
 North Carolina Department of Health and Human Services
 North Carolina Department of Transportation
 North Carolina Wildlife Resources Commission
 Dare County Health Department
 NOAA – National Marine Fisheries Service
 Local County Courts and Boards of Commissioners
 Local Town Councils and Commissions
 Local Planning Commissions

7.02 Subcontractors

- A. The Contractor agrees not to assign, transfer, convey or otherwise dispose of the Contract or the right, title or interest therein either in whole or in part, or the power to execute such contract, to any person, firm or corporation without the written

consent of the Owner. No portion of the contract shall be sublet, subcontracted or performed by other than the Contractor's own organization except with the written consent of the owner. Requests for permission to sublet or subcontract any portion of the Contract or to have any of the work performed by another organization shall be in writing and accompanied by a demonstration that the organization which will perform the work is experienced and equipped for such work.

- B. Written consent to assign, transfer, convey, sublet, subcontract or otherwise dispose of any portion of the Contract or to have portions of the work performed by other than the contractor's own organization shall not relieve the Contractor of any responsibility under the Contract or for the fulfillment of the Contract.
- C. The Contractor shall perform with the Contractor's own organization Contract work amounting to not less than 40 percent of the amount of the Contract as awarded, except that any items designated in the Contract as specialty items may be performed by subcontract. The cost of any such specialty items may be deducted from the amount of the Contract before computing the amount of work required to be performed by the Contractor's own organization. The term "own organization" refers only to workers employed and paid directly by the Contractor and equipment owned or rented by the Contractor.
- D. The Contractor shall make payment for subcontract work; performance of specialty items and other Contract work performed by others in the same units and on the same basis of measurement as apply under the Contract.
- E. In making payment to subcontractors and to others by whom work under the Contract is performed, the Contractor shall protect against the possibility of overpayment, and shall assume losses that result from overpayment. While the Engineer may estimate the quantities of work performed and of materials on hand for inclusion in progress payments, there is no guarantee of the correctness of such estimates. No incorrect estimate, regardless of by whom or when given, will be binding upon the Owner in final settlement.
- F. The Contractor shall direct and coordinate the operations of subcontractors and others performing the work and shall insure that the orders of the Engineer and or Owner are promptly carried out. Failure of the Contractor to control the work of subcontractors and other employees may result in the issuance of orders requiring the cancellation of the subcontracts and the removal of the subcontractors and other employees from the work site.

7.03 No Waiver of Legal Rights

- A. Owner shall not be precluded or stopped by any measurement, estimate or certificate made either before or after completion and acceptance of work or payment therefore, from showing the true amount of character of work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or that work or materials do not conform in fact to the Contract.
- B. Owner shall not be precluded or stopped, notwithstanding any such measurement, estimate or certificate, or payment in accordance therewith, from recovering from

the Contractor and his Sureties such damages as it may sustain by reason of his failure to comply with terms of the Contract, or from enforcing compliance with the Contract.

- C. Neither acceptance by Owner or by any representative or agent of the Owner of the whole or any part of the work, nor any extension of time, nor any possession taken by Owner, nor any payment for all or any part of the project, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or any right to damages herein provided. A waiver of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

7.04 Other Contracts

- A. Owner shall have the right to let other contracts to be coordinated with this Contract. The Contractor shall cooperate with and afford such other contractors reasonable opportunity for introduction and storage of materials and for execution of their work. Any matter of dispute shall be decided by the Owner, and his decision shall be binding.
- B. If any part of the work depends for its proper execution upon work of any such other Contractor, the Contractor shall inspect and promptly report to the Engineer and Owner any defects that affect subsequent work. Failure to do so shall constitute an acceptance of such other Contractor's work as fit and proper for the reception and attachment of his own work and equipment.

7.05 Hold Harmless

- A. Contractor shall defend, indemnify and hold harmless Owner from and against all liability or loss and against all claims or actions based upon or arising out of damage or injury to persons or property caused by or sustained in connection with the performance of this Contract by Contractor except, for losses, claims, or actions resulting from the sole negligence of Owner.
- B. The Contractor shall assume all responsibilities for the work, and bear all losses and damages directly or indirectly resulting to the Contractor, the Owner, or to others on account of the character or performance of the work, unforeseen difficulties, accidents, or any other cause whatsoever.
- C. The Contractor shall assume defense of, indemnify and save harmless the Owner, its officers, and employees from all claims, liability, loss, damage and injury of every kind, nature and description, directly or indirectly resulting from activities in the performance of the Contract, the ownership, maintenance or use of motor vehicles in connection therewith, or the acts, omissions, operations, or conduct of the Contractor or any Subcontractor under the Contract or any way arising out of the Contract, irrespective of whether any act, omission or conduct of the Owner connected with the Contract is a condition or contributory cause of the claim, liability loss, damage or injury and irrespective of whether act, omission, or conduct of the Contractor or Subcontractor is merely a condition rather than a cause of a claim, liability, loss, damage or injury.

- D. The Contractor shall not be liable for nor be required to defend or indemnify, the Owner relative to claims for damage or damages resulting solely from acts or omissions of the Owner, its officers, agents, or employees.

7.06 Insurance

- A. The Contractor shall provide and maintain general liability, auto liability, property, and workers' compensation insurance for life of this Contract.

1. General Liability Insurance

The Contractor shall maintain an ISO Commercial General Liability insurance policy (or an equivalent policy approved by Owner) with combined single limits of at least \$1,000,000 per occurrence for bodily injury, personal injury, and property damage and an aggregate limit of at least \$2,000,000. The policy shall include coverage for contractual liabilities.

2. Comprehensive Automobile Liability Insurance

The Contractor shall maintain an automobile liability insurance policy with combined single limits of at least \$1,000,000 per occurrence for bodily injury, personal injury, and property damage.

3. Additional Insured Endorsement

The general and automobile insurance policies specified above shall include endorsements naming as an additional insured "the Town of Southern Shores, its agents, employees and officials all while acting within their official capacity as such."

4. Property Insurance

Depending on the nature of the construction contemplated under this contract, Owner may require Contractor to provide property insurance. Refer to Special Provisions section of this Contract.

5. Workers' Compensation Insurance

Contractor, its subcontractors, if any, and all employers working under this agreement are subject employers under the North Carolina Workers' Compensation Law which requires them to provide workers' compensation coverage for all their subject workers.

Contractor is responsible for maintaining workers' compensation insurance for his employees and assuring that his subcontractors, if any, also maintain workers' compensation insurance. Contractor shall defend, indemnify, and hold Owner harmless from any liability for any workers' compensation claims costs, fines, or costs whatsoever arising from Contractor's or his subcontractors' failure to comply.

6. Additional Policies and Special Coverage

B. Refer to the Special Provisions section of this Contract for additional coverage that may be required.

C. Certificates of Insurance

1. Certificates of insurance evidencing all policies required by this Contract shall be delivered to the Owner prior to the commencement of any work. All certificates shall include a 30-day notice of cancellation clause and required additional insured endorsements. The Owner has the right to reject any certificate for unacceptable coverage and/or companies.

7.07 Royalties and Patents

A. The Contractor shall pay all royalties and license fees. The Contractor shall see the Owner free, indemnify and defend Owner, from all loss or damage that may result from the wrongful or unauthorized use of any patented article or process.

7.08 Permits

A. The following Permits and Supporting Data apply to this project:

1. None for this project.

7.09 Payment of Obligations

A. Contractor shall: (1) Make payment promptly as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided in this contract. (2) Pay all contributions or amounts to the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract. (3) Not permit any lien or claim to be filed or prosecute against the state, county, school district, municipality, municipal corporation, or subdivision thereof on account of any labor or material furnished. (4) Pay to the Department of Revenue all sums withheld from employees.

B. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contract or subcontractor by any person in connection with this contract as such claim becomes due, the proper officer or employees representing Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due the Contractor by reason of this contract.

C. The payment of a claim in the manner authorized above shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

7.10 Dispute Settlement

A. In the event the Contractor has filed a written protest in accordance with Section 4.09 Disputed Work, the Owner shall review the written protest and related documents and perform such investigations as the Owner deems appropriate and

will try to transmit its decision in writing to the Contractor within 30 days from the date of receipt of the written protest.

- B. In the event the Owner elects to do so, the Owner may establish a "Claims Review Board" either to assist in reviewing appeals hereunder or to consider Contractor appeals directly.
- C. Subject to the provisions of Section 7.10.E. below, during the pendency of a written protest any related work performed by the Contractor shall be done at the Contractor's risk unless authorized by the Owner.
- D. [reserved]
- E. Where a written protest relates to only a portion of the work to be performed under this Contractor, the Contractor shall not delay that portion of the work to which the written protest does not relate, unless the Contractor shall have written permission or written direction from the Owner to do so.
- F. [reserved]
- G. The parties hereby stipulate and consent that jurisdiction and venue shall be exclusively for all matters arising under this agreement in the courts of the State of North Carolina.
- H. All terms and provisions of this agreement shall be construed according to North Carolina law, it being agreed by the parties that the agreement was entered into in the State of North Carolina.

7.11 Protection of Other Governmental Authorities

- A. Whenever work under the Contract affects or may affect public property owned by or under the jurisdiction of any governmental authority, agency or district, including governmental subdivision other than the Owner, the Contractor shall indemnify and save harmless such governmental authority, its officers, agents and employees, from loss damage or claim of loss or damage to such property or the use thereof, arising from work under the Contract. Any bond or insurance and any special guarantee deposit required by such governmental authority, shall be supplied before beginning any portion of the work which affects or may affect the property of such governmental authority or the use thereof.

7.12 Public Safety and Convenience

- A. The Contractor shall conduct the project with proper regard for the safety and convenience of the public. When the project involves use of public ways, flag persons shall be provided when directed, and means of free access to all fire hydrants, service stations, warehouses, stores, houses, garages and other property shall be maintained.
- B. When access to a business or businesses may be confusing for the traveling public due to operations of the contractor, the Contractor shall provide adequate signage to clarify alternate or existing access to the business(s). Private residential

driveways shall be closed only with approval of the Owner or specific permission of the property owner.

- C. Normal operation of public transit vehicles shall not be interfered with unless otherwise authorized. The contractor shall not obstruct or interfere with travel over any public street or sidewalk without approval. Open trenches and excavations shall be provided with adequate barricades of an approved type which can be seen from a reasonable distance. At night, all open work and obstructions shall be marked by lights. The Contractor shall install and maintain all necessary signs, lights, flares, barricades, railings, runways, stairs, bridges and facilities. The Contractor shall observe all safety instructions received from Engineer, Owner or governmental authorities, but following of such instructions shall not relieve Contractor from his responsibility or liability for accidents to workmen or damage or injury to person or property.
- D. Emergency traffic such as police, fire and disaster units shall be provided reasonable access to the work area at all times.
- E. The Contractor shall be liable for any damages which may result from failure to provide such reasonable access or failure to notify the appropriate authority.

7.13 Personnel Safety

- A. The Contractor shall be responsible for conditions of the job site, including safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours. Safety provisions shall conform to the applicable federal, state, county, and local laws, ordinances and codes.
- B. Where any of these are in conflict, the more stringent requirement shall be followed. The duty of the Engineer to conduct construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on, or near the construction site.

7.14 Detours

- A. All detours caused by work operations, or for convenience of the Contractor, shall be constructed and maintained at no expense to Owner. Plans for such detours shall be submitted to Engineer and Owner for approval.
- B. The Contractor may request to construct and maintain temporary detours to provide adequate passage of public traffic and protection of the work at all times. If a detour established by the Contractor causes or may cause difficulty or confusion regarding access to a business, the Contractor shall provide signs to direct the traveling public to the business.
- C. Detours within the limits of the project such as side street crossings or utilization of one or more lanes of the construction area for maintenance of traffic shall be the responsibility of the Contractor.

- D. If, in the judgment of the Engineer, one-way piloted traffic is necessary, it shall be provided for as set forth in Section 02105 - Temporary Traffic Control. The Engineer may recommend if flagging and piloting can be dispensed with after working hours. In the event that flagging and piloting are required after working hours as a result of carelessness or negligence on the part of the Contractor to properly condition work at the end of the day, such piloting and flagging shall be provided by Contractor at no expense to Owner.
- E. Upon failure to immediately provide, maintain, or remove suitable detours when ordered to do so by Engineer or Owner, Owner may without notice to Contractor or his Surety provide, maintain, or remove the detour and deduct costs thereof from any payments due or coming due to Contractor.

7.15 Labor

- A. Upon notification in writing from the Owner, the Contractor shall remove immediately from the job for its duration any laborer, workman, mechanic, foreman, superintendent, or other person employed who is found to be incompetent, intemperate, troublesome, disorderly or otherwise objectionable, or who fails or refuses to perform his work properly and acceptably.
- B. Attention is directed to the North Carolina General Statutes relative to unlawful employment practices or discrimination by employers against any employee or applicant for employment because of race, religion, color, sex, or national origin. It is an unlawful employment practice for an employer, because of the race, religion, color, sex, or national origin of any individual, to refuse to hire or employ or to bar or discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.
- C. In the event the Contract is funded in whole or in part by federal funds, the Contractor shall comply with all provisions of Executive Order No. 11246 and of the rules, regulations, and relevant orders of the Secretary of Labor.
- D. In the event of the Contractor's noncompliance with the nondiscrimination clauses of a Contract so funded, or with any such rules, regulations, or orders, the Contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for future government contracts or federally assisted construction contracts, in accordance with procedures authorized in Executive Order No. 11246, and such other sanction may be imposed and remedies invoked as provided in Executive Order No. 11246, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- E. If it is necessary to perform construction work on Saturdays, Sundays or legal holidays, or outside the eight (8) hour regular working day, Owner shall be notified of intent to do so one day prior to commencing such overtime work. In any event, all work shall be subject to Town Council approval. Prior to the start of such work, the Contractor shall arrange with the Engineer and/or Owner for continuous or

periodic inspection of the work, surveys, and tests of materials, when necessary. Contractor shall be responsible for any additional costs incurred for inspection of work, surveys, and tests of materials necessitated by such overtime work.

7.16 Use of Explosives

- A. The use of explosives is prohibited.

7.17 Rights-of-Way, Easements and Premises

- A. Construction activities shall be confined within property lines, limits of easements and limits of construction permits as shown or specified in the Contract Documents, unless arrangements are made with owner(s) of adjacent private property. Prior to the use of any private property outside these specified boundaries, written permission of the property owner(s) shall be filed with the Owner; upon terminating such usage, a release from all damages, signed by the property owner(s), shall be filed with the Owner. Contractor shall save and hold harmless Owner from any loss or claim for damages resulting from unauthorized use of private property.
- B. The specified work areas shall not be unreasonably encumbered with materials and equipment, and permits for special occupancy and use of the specified work areas shall be obtained from the proper agencies and all associated costs borne by the Contractor. The Engineer's directions regarding signs, advertisements, fires, and smoking will be followed.

7.18 Waste Sites

- A. Shall be permitted through the NCDENR, NCDOT or other local, state or federal agency having jurisdiction of the type and nature of the waste.
- B. Either type of waste site shall be operated in such a manner as to meet all safety and health requirements of state and local agencies. Sites, operations, or the result of such operations, which create a nuisance problem, or which result in damage to public or private properties will not be permitted.
- C. Permits for dumping on sites designated in the Contract Documents or by the Engineer will be provided by Owner. The Contractor shall obtain any necessary permits for other sites at no expense to Owner. In selecting and obtaining fill sites for excess materials, the Contractor shall be aware of restrictions and regulations related to fill of wetlands, floodways, floodplains, drainage ways, erosion control, etc., and shall obtain all necessary approvals and permits related to the fill. Copies of issued permits will be furnished to Engineer prior to commencing filling operations. Materials shall not be deposited on an unimproved dedicated street without permission of the Engineer.
- D. Where waste sites are designated in the Contract Documents, the operations shall be performed as directed; and upon completion, the Contractor shall uniformly clean and shape the area as directed.

- E. Where there is additional waste excavation in excess of that needed for the project or for predesignated sites, this material shall be disposed by securing and operating a waste site in conformance with the general requirements hereinbefore described. Contractor may accept any reimbursement that can be secured from the sale of such material.

8. PROSECUTION AND PROGRESS OF WORK

8.01 Contractor's Construction Schedule

- A. Before starting work, the Contractor shall submit a proposed construction schedule to the Engineer and Owner. If it is desirable to carry on operations in more than one location simultaneously, a schedule shall be submitted for each location two weeks in advance of beginning such operations. In the event that the Contractor's proposed construction schedule does not meet the necessary construction program schedule as determined by Owner, the Contractor shall resubmit a schedule that conforms as approved.
- B. The schedule shall show the proposed order of work and indicate the time required for completion of the major items of work. This working schedule shall take into account the passage or handling of traffic with the least practicable interference therewith and the orderly, timely and efficient prosecution of work. It will also be used as an indication of the sequence of the major construction operations and as a check on the progress of work, but does not become a part of the Contract.
- C. If requested by the Engineer or Owner, the Contractor shall provide weekly progress schedules of expected project activities. The progress schedules shall indicate the Contractor's plan of prosecution of the work in sufficient detail to enable the Contractor, the Town, and the Engineer to plan, coordinate, appraise, document, and control their respective Contract responsibilities. The schedule of work, and the work forces and equipment supplied by the Contractor, shall be adjusted periodically as necessary to allow for the completion of the Contract within the Contract Time.

8.02 Preconstruction Conference

- A. A pre-construction conference with the Owner, Engineer, and Contractor will be provided. A Contractor's attendance at the said preconstruction conference is not mandatory, but strongly encouraged.

8.03 Notice To Proceed

- A. A written "Notice to Proceed" will be given after the Contract has been executed and the Performance Bond and Payment Bond, and all required insurance certificates have been filed with and approved by the Owner. No work shall commence under the Contract until such written notice has been given.
- B. Notice to Proceed for the project may be delayed by Owner until required utility relocation, construction, or reconstruction has been completed or has progressed to a satisfactory degree of conformance which will allow initial contract work to commence.

- C. Work shall commence after the date of the Notice to Proceed, or by such other date or time period specified in the Notice to Proceed. The actual date of commencement of work, or the last allowable date for commencement as specified in the Notice to Proceed, whichever is earlier, shall establish the date for commencement of the Contract time. The Contractor shall notify the Owner seven (7) days in advance of the actual time and place work will be started.

8.04 Contract Time

- A. Except as otherwise agreed by the Town and Contractor in writing, the Contract Time shall be that period that begins upon the execution of the Contract and ends on December 15, 2022.
- B. Time shall be considered the essence of the Contract.
- C. If, in the judgment of the Owner, insufficient forces are being employed, or inadequate equipment and methods are used, or if progress is for any reason unduly delayed, he may instruct the Contractor in writing to increase his force or equipment, or adopt improved methods to expedite the work, and the Contractor shall heed and follow such instructions, but conformity to the Owner's instructions shall not relieve the Contractor of any of his responsibilities under the Contract.
- D. If the Contractor at any time falls behind its proposed schedule of work, the Owner may request and the Contractor shall supply a new schedule of work along with a statement regarding the increased forces or equipment or new construction methods to be employed on the work in order to complete the work within the Contract Time. Failure to supply a schedule of work and sufficient forces and equipment to complete the work within the Contract Time may be declared a breach of contract by the Owner.
- E. The Contractor shall complete the work called for under the Contract within the Contract Time or adjusted Contract Time.

8.05 Suspensions Of Work

- A. Suspension by Owner
 - 1. The Contractor shall immediately suspend work on the project wholly or in part as directed by the Owner for good and sufficient reason. In the event of such suspension, Owner shall, except in emergency, and except as hereinafter provided, give Contractor three days' notice and work shall be resumed within five days after notice has been given by Owner to Contractor to do so. Owner shall allow Contractor an extension of time for completion corresponding to the total period of temporary suspension, and shall reimburse him for necessary rental of unused equipment, services of watchpersons and other unavoidable expenses by reason of the suspension without fault of Contractor.
 - 2. Contractor shall not be entitled to damages, intangible or overhead costs or anticipated profits from such temporary suspension.

B. Suspension by Engineer or Owner

1. The Contractor shall immediately suspend work on the project wholly or in part as directed by the Owner or, with the Owner's written authority, the Engineer, pursuant to Subsections 5.01 and 5.02 due to: (1) failure to correct unsafe conditions for working personnel, the general public or Owner's employees, (2) failure to carry out provisions of the Contract Documents, or (3) failure to carry out orders or directions, for such periods as the Engineer or Owner may deem necessary due to conditions considered unsuitable for the performance of the work or for any reason deemed to be in the public interest.
2. The Contractor shall immediately suspend work on the project wholly or in part as directed by the Owner or, with the Owner's written authority, the Engineer, for such periods as the Engineer may deem necessary, pursuant to Subsection 5.19 for failure to immediately correct defective and unacceptable work.

C. Suspension by Contractor

1. Suspending operations because of seasonal conditions or other unsuitable conditions pursuant to Subsection 8.06 shall require the concurrence of the Owner.

D. Responsibility of Contractor

1. Voluntary or involuntary suspension or slowdown, with or without the approval of the Owner or Engineer, and suspension of work ordered by the Owner or Engineer will not be grounds for claims or damages, idle equipment or labor, or extra compensation. No allowance or compensation will be made on account of such suspensions of work except as provided hereinbefore and as provided in Subsection 8.06.
2. At the commencement of, and during any suspensions of work, the Contractor shall be responsible for the care of work performed and take every precaution to prevent any damage or deterioration of the work. The Contractor shall be responsible for work, including temporary protection devices to warn, safeguard, protect, guide and inform traffic during suspension, the same as though its performance had been continuous and without interferences.
3. The Contractor shall be responsible and bear all costs for providing suitable provisions for traffic control and for maintenance and protection of the work during suspension for cause. If the Contractor fails to provide for temporary traffic control and to maintain the work, the Engineer or Owner may immediately proceed to maintain the work. The cost of such maintenance shall be deducted from payments due or to become due to the Contractor.

E. Resumption of Work

1. In all cases of suspension, work will be resumed only upon written order of the Engineer or Owner.

8.06 Delays and Extensions

- A. Contract completion time may be subject to adjustment during the progress of the work at the written request of the Contractor, for causes beyond the control of Contractor and which the Owner, with the advice of the Engineer, determines actually affected the time necessary for completion of work under the Contract.
- B. The Owner or Engineer will not consider adjustment of Contract Time based on shortage or inadequacy of labor and equipment, negligence or fault of Contractor and other deficiencies or lacks which are within the province of Contractor's control or responsibility. Causes which will be given consideration in justifying adjustment of Contract time will include, but are not limited to, the following:
 1. Errors, changes, or omissions in the Contract Documents.
 2. Failure of Owner, its representatives and its other contractors to act promptly in carrying out obligations and duties.
 3. Failure of Owner to submit the Contract Documents, or a part thereof, to the Contractor for execution within the specified time contained in Subsection 3.01 of the Proposal Form.
 4. Performance of extra work under Subsection 4.10.
 5. Court orders enjoining the prosecution of the project, strikes, acts of God which shall include action of the elements not reasonably foreseeable by the Contractor, or act of Owner not authorized by the Contract or permitted by law.
- C. A Contract time extension will be considered only if the Contractor has given written notice to Owner and Engineer of the cause of delay within ten days after the beginning thereof and notice to Owner or Engineer of the termination thereof within five days after such termination, and make claim for such extension prior to the Contract completion date. The decision by the Owner, with advice from the Engineer, of the reasonable term of any extension or denial thereof shall be final.
- D. An adjustment of Contract time, as herein provided, shall be Contractor's sole remedy for any delay in completion of the project arising from causes beyond the control of Contractor, and in no event shall Contractor be entitled to collect or recover any damages, loss or expense incurred by reason of such delay.

8.07 Liquidated Damages

- A. **The Contractor agrees to pay \$500 per calendar day for damages for delay sustained by the Town by reason of the Contractor's failure to timely perform its obligations under the Contract.** Such damages include, but are not limited to, the cost of prolonged administration, supervision and inspection and resolution of traffic and public relations issues surrounding the delayed completion. In submitting a Bid, Contractor the amount of liquidated damages as stated above is a reasonably accurate forecast of the probable damages for delay that would be sustained by Town in the event of a delay in completion. Such liquidated damages

shall not be the exclusive remedy of Town, but shall be in addition to any other remedies Town may have for breach of the Contract and shall be in addition to any actual provable damages, other than for delay, sustained by Town by reason of a breach of the Contract by Contractor.

- B. When the Contractor believes that all work on the project has been completed, the Contractor will set up a walk-through inspection with the Engineer and Owner, unless the Owner elects not to participate in such inspection. A "punch list" of all unfinished or unacceptable items will be made. The Contractor will finish all punch list work before the end of time allowed for the project. If work has not been completed by the end of the time allowed for the project, liquidated damages shall be charged for such delayed completion as provide above and shall be in addition to any other remedies the Town may have for breach of the Contract.

8.08 Contractor's Representative

- A. Before starting work an authorized representative shall be designated who shall have complete authority to represent and to act for Contractor, in his absence from the work site, in all directions given him by the Owner or Engineer. Contractor, or his authorized representative, shall supervise the work, and shall be present on site continually during its progress, including such times as only Subcontractors may be actively working on the project. If called for in the Contract Documents, an office shall be maintained on or adjacent to the project site. The Contractor shall keep a complete copy of the Plans, Permits and Specifications on or near the site at all times. If Contractor and his authorized representative are not present on any part of the work where it may be necessary to give instructions, directions may be given by Engineer or Owner to the superintendent or foreman who may have charge of that particular part of the project, and such order shall be received and followed. Such directions shall not be deemed to change the status of Contractor or Subcontractor, not to make Owner an employer, nor to give Owner direct responsibility for the methods and manner of the work. Such directions of major importance will be confirmed in writing. Any direction will be so confirmed in each case on written request from the Contractor.

8.09 Conflicts, Errors, Omissions, and Additional Drawings

- A. All plans, contract documents, and typical sections shall be checked and compared prior to construction and Engineer notified of any discrepancies or omissions in order to permit correction by Engineer. Coordination of Plans and Specifications is intended. Labor and materials required for the work shall be furnished if indicated on one and not the other as fully as if mentioned or indicated on both; and should any work or materials be reasonably required or intended for carrying the project to completion which are inadvertently omitted on the Plans and Specifications, the same shall be furnished as fully as if particularly delineated or described. The intent of the Plans and Specifications is to show and describe a complete project within the limits stated. Dimensions shown on Plans shall be followed rather than scale measurements. Whenever it appears that the Contract plans are not sufficiently detailed or explicit, the Engineer may furnish additional detailed drawings or written instructions.

- B. In case of conflict between requirements set forth in the Contract Documents the provisions for order of precedence in Subsection 4.04.A shall apply.

8.10 Owner's Right To Do Work

- A. Neglecting to prosecute the project properly, or failing or refusing to perform any of the terms or conditions of the Contract, will permit Owner to supply or correct any deficiency or defect without prejudice to any other remedy. Such action by Owner shall be taken only after three days' notice by Engineer or Owner to Contractor and his Surety, unless in the judgment of the Owner, an emergency or danger to the work or to the public exists, in which event action of Owner, as set forth above, may be taken without any notice whatsoever. The cost of such action by owner shall be deducted from the payment then or thereafter due Contractor. The Contractor shall pay Owner any costs in excess of such payment due.

8.11 Termination of Contract

- A. All terms and conditions of the Contract are considered material, and failure by Contractor to comply with any of said terms or conditions shall, at Owner's option, be deemed a breach of contract. Upon such failure, Owner shall have the right, whether an alternative right is provided or not, to declare the Contract terminated. Issuance by Owner of an order stating that the Contract is terminated, and service of a copy of said order upon Contractor and his Surety, shall be deemed a complete termination of the Contract. Upon the Contract being so terminated, Owner may retain all sums due under the Contract and both the Contractor and his Sureties shall be liable under his bond for all losses, expenses and damages caused to Owner by reason of his failure to complete the Contract, and Surety shall be required, at Owner's option, to complete the project. Notwithstanding such termination, Contractor and his Sureties shall remain liable under the terms of the Contract for work performed prior to such termination. The Engineer will recommend to the Town the payment due Contractor for work performed prior to the date of Contract termination.
- B. Town and Contractor may agree to terminate the contract: (1) If work under the contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of a third party judicial proceeding relating to the work other than a suit or action filed in regards to a labor dispute; and (2) If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the public works.
- C. Reimbursement for mobilization expenses, when not included in the contract as a separate pay item, including moving equipment to and from the work, will be considered where the volume of work completed is too small to compensate the Contractor for these expenses under the Contract prices. When an item for mobilization appears in the Contract as a separate pay item, the amount to be paid the Contractor will be the mobilization amount earned in accordance with Section 02100.
- D. Acceptable materials obtained by the Contractor and not incorporated in the work may be purchased from the Contractor at actual cost as shown by receipted bills.

8.12 Default By Contractor

- A. The Owner may, without prejudice to any other right or remedy and after giving the Contractor and Contractor's surety seven days' written notice, terminate the employment of the Contractor if the Contractor should:
- 1) Be adjudged bankrupt or experience dissolution, termination of existence, insolvency, business failure or discontinuance as a going business, appointment of a receiver of any property of, for the benefit of creditors by, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against contractor.
 - 2) Make a general assignment for the benefit of the Contractor's creditors;
 - 3) Have a receiver appointed on account of contractor's insolvency;
 - 4) Fail to supply enough properly skilled workers, proper materials, or adequate equipment for the efficient prosecution of the work;
 - 5) Fail to make prompt payment to subcontractors or suppliers;
 - 6) Disregard laws, ordinances, or the instructions of the Engineer, Owner, or Town; or
 - 7) Fail to comply with any term, obligation, or covenant or condition contained in this contract or the associated permits, within seven (7) days after receipt of written notice from Owner demanding such compliance.
- B. The Owner will take possession of the premises and all materials, tools, and appliances as well as all other materials on which the Contractor has received partial payment. The Owner may finish the work by any method the Owner deems expedient.
- C. The Contractor shall not be entitled to receive any further payment until the work is completed. On completion of the work, determination shall be made by the Town, with the advice of the Engineer, of the total amount the Contractor would have been entitled to receive for the work had the Contractor completed the work. The difference between the total amount and the amounts previously paid to the Contractor shall be called the unpaid balance and if the unpaid balance exceeds the expense incurred by the Owner in completing the work, including expense for additional managerial and administrative services, the excess will be paid to the Contractor, with the consent of the surety. If the expense incurred by the Owner exceeds the unpaid balance, the amount of the excess shall be paid to Owner by the Contractor or the surety.
- D. Upon completion of the project by others, Contractor will be entitled to the return of all material which has not been used in the work or which has not been paid for, and for all plant, tools, equipment and other property, provided, however, that no claim will be allowed because of usual and ordinary depreciation, loss, wear and tear. None of the foregoing provisions, or the provisions in Subsection 8.11, shall be construed to require Owner to complete the work, nor to waive or in any way limit or modify the provisions of the Contract relating to the fixed and liquidated damages suffered by Owner on account of failure of Contractor to complete the project within the time prescribed.

8.13 Completion and Acceptance

- A. After completion of the work specified in the Contract, and completion of the final inspection, the Engineer will recommend to the Owner that the work be accepted and payment be made.
- B. No payment made under the Contract except the final payment shall be evidence of the performance of the Contract, either wholly or in part, and no payment shall constitute an acceptance of unauthorized or defective work or improper material.
- C. A certificate of completion or letter of acceptance of the project, submitted by the Engineer or other officer of the Owner, shall constitute final acceptance of the work on the date of the certificate or letter. Such certificate or letter of acceptance shall not constitute an acceptance of any unauthorized work.
- D. The acceptance of the work shall not prevent the Owner from making claim against the Contractor for defective work.

8.14 Final Warranty

- A. The work is guaranteed by the Contractor for a specified period from the date of final acceptance by the owner. If no warranty period is specified, the work shall be guaranteed for one year from the date of final acceptance by the owner. The Contractor's performance bond shall remain in effect during the warranty period. If, within the warranty period, repairs or changes are required in connection with the work, the Contractor shall promptly, without expense to the Owner:
 - 1) Place in satisfactory condition all guaranteed work;
 - 2) Correct all damage to the building site, equipment or contents which is the result of the use of materials, equipment or workmanship with are inferior, defective, or not in accordance with the terms of the contract; and,
 - 3) Correct any work, material, equipment, or contents of building, structure or site disturbed in fulfilling the guarantee.
- B. Repairs, replacements or changes made under the warranty requirements shall be warranted for the specified warranty period, or for one year, beginning on the date of the acceptance of the repairs, replacements or changes.
- C. If the Contractor fails within ten days to proceed to comply with the terms of this warranty, the owner may have the defects corrected. The Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where delay would cause serious loss or damage, repairs may be made without notice to the Contractor and the Contractor or Contractor's surety shall pay the cost.

9. MEASUREMENT AND PAYMENT

9.01 Measurement of Quantities

- A. Payments shall be based on measurements of completed work in accordance with the United States Standard Measures. Units of measurement for payment shall be

shown or specified. In calculating quantities, all lengths and areas will be based on horizontal and vertical measurement, unless otherwise specified.

- B. Basis is defined as the particular standard unit of measurement which will be applied to a particular item of work as shown on the Proposal for a specific Contract. Each basis of measurement herein set forth is generally applicable and will be in effect; however, in case of conflict, the order of precedence will conform to Subsection 4.04.A.

9.02 Scope of Payment

- A. Quantities listed in the proposal do not govern final payment. These quantities are estimates only for purposes of obtaining competitive bids. Payments to the Contractor will be made only for actual quantities of Contract items performed in accordance with terms of the Contract and for items of work actually performed as Extra Work or under supplemental agreement in accordance with the terms of the Contract.
- B. The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, labor, tools, equipment and incidentals, excluding those specified in Subsection 4.09, necessary for performing all work under the Contract, also for all loss, damage or liability arising from the nature of the work, or from the action of the elements, subject to provisions of Subsection 6.06 or from any unforeseen difficulties which may be encountered during prosecution of the work, until final acceptance by Owner.

9.03 Payment Schedule

- A. The Contractor may submit a request for partial payment on a monthly basis (every 30 days), or other interval as approved by the Owner. The amount of partial payments will be based on the work accomplished and accepted as the last day of the approved pay period. All requests for payment shall be made on the form furnished to the Contractor by the Town Of Southern Shores. The form shall be completely and legibly filled out with all appropriate information supplied and shall be signed by an authorized representative of the Contractor. Minority Business (MB) and Women's Business (WB) participation shall be listed in the appropriate spaces on all requests for payment. If there is no participation the word "None" or the figure "0" shall be entered. One hundred percent (100%) payment shall be made after successful completion of the work as verified by the final inspection. Final payment will be released upon the receipt of a written statement from the Contractor to the Town indicating that all subcontractors have been paid in full.

9.04 Verification of Work

- A. Reserved

9.05 Compensation for Alteration of Contract

- A. Unless changes and alterations in Plans or Quantities, Contract Documents, or details of construction materially change the character of work to be performed or

unit costs thereof, Contractor shall accept as payment in full, so far as Contract items are concerned, payment at the same unit prices as are provided under the Contract for accepted quantities of work done. If the work involved is measured on a lump sum basis, the adjustment of the lump sum for the increases or decreases shall be as specifically set forth in the applicable section of these Standard Specifications.

- B. If, however, the character of work or unit costs thereof are materially changed, pursuant to Subsection 4.07, compensation for such work will be made on such basis as may have been agreed to in advance of the performance of work, or in case no such basis has been previously agreed upon, then an allowance may be made, either for or against the Contractor, in such amount as the Town, with the advice of the Engineer, may determine to be fair and equitable.

9.06 Eliminated Items

- A. Owner shall have the right to eliminate, omit or cancel (herein collectively termed elimination) portions of the Contract Documents relating to construction of any items or part of any item by payment to the Contractor of a fair and equitable amount covering all items of actual costs incurred directly in connection with eliminated work and prior to the date of elimination of work by order of the Town. Where practicable, work completed before elimination shall be paid for at unit prices, otherwise Contractor will be allowed a profit percentage on materials used and construction work actually performed at rates as provided in Section 4.11 for force account work, but no allowance will be made for anticipated profits. Acceptable materials ordered by Contractor, delivered to the work site, or properly stored at sites approved by the Engineer Or Owner prior to date of elimination of work by order of the Town may be purchased from Contractor by Owner at actual cost, and thereupon shall become the property of Owner.

9.07 Payment for Extra Work

- A. Extra work shall be paid at prices agreed upon between Contractor and Owner, but in no event exceeding unit prices established in the Contract.
- B. When such order pertains to work of a class or classes for which no unit prices are established, then the agreed adjustment shall be based either on unit prices decided on fair and equitable grounds or shall be a lump sum similarly decided, as Owner may determine, or such work may be done as Extra Work at force account. In no case shall any claim for Extra Work be made unless ordered as such.

9.08 Progress Payments and Retainage

- A. Payments for all work under the Contract will be made at the price or prices bid therefore, and those prices shall include full compensation for all incidental work.
- B. Progress estimate of work performed in any calendar month will be made by the Engineer before the last week of that month. These estimates shall include value of labor performed and materials incorporated in the work since commencing work under the Contract. Such estimates need not be made by strict measurements and

may be approximate only, may relate to the cost schedule mentioned herein, and shall be based upon the whole amount of money that will become due according to terms of the Contract when project has been completed. The Engineer may in special circumstances include in progress estimates up to eighty-five percent of the cost of Contractor of materials delivered to the site, properly stored, protected from damage and insured, provided that after any such payment such materials must be used in the particular project; Engineer may require receipted invoices prior to payment.

- C. If the Contract price is determined, in whole or in part, on a lump sum basis, Contractor shall prepare an estimated cost schedule relating thereto and have Engineer approve same before commencing work; progress estimates based on said estimated cost schedule shall be the basis for progress payments.
- D. Progress payment will be made by Owner on a monthly basis no later than the 20th day of the subsequent month of work performed, except that, additional days may be required when a payment is accompanied by one or more of the following: an extension of completion time, change order or extra bill. Payment may be made via use of checks or warrants at the option of Owner for the amount of the approved estimate. Notwithstanding any other payment provision herein, the Owner may retain up to ten percent (10%) retainage on payments made pursuant to this Contract, but only after the Owner has made a determination that such retainage made be withheld pursuant to GS 143-134.1.
- F. Monies retained will be released to Contractor following official acceptance of the project by the Town Council of the Town of Southern Shores. The Town Engineer may recommend early release of partial retainage, if any, if all work is completed.
- G. If Contractor fails to complete the project within the time limit fixed in the Contract or any extension thereof, no estimate may be accepted for progress or other payments allowed thereafter until the project is completed.
- H. The making of progress payments shall under no circumstances be construed as an acceptance of any of the work or materials under the Contract.

9.09 Deferment of Payments

- A. No partial or final payment will be made until all orders made by Engineer to Contractor in accordance with the Specifications are complied with, or until all claims or liens filed or prosecuted against Owner, its officer or employees contrary to provisions of the Contract are satisfied.
- B. In the event a complaint or charge of unlawful employment practices is filed against the Contractor by anyone, including the Owner, no further payments will be made on the Contract until such time as the issue is resolved.

9.10 Final Estimate and Payment

- A. The Engineer, Project Inspector, and Owner shall be notified when work is considered complete and Owner, with the advice of the Engineer, shall, within fifteen (15) days after receiving notice, either accept the work or notify Contractor

of work yet to be performed on the Contract. If accepted, Engineer shall so notify Contractor, and will make a final estimate and recommend acceptance of the work as of a certain date. Upon approval and acceptance by Owner, Contractor will be paid a total payment equal to the amount due under the Contract including all retainage, if any.

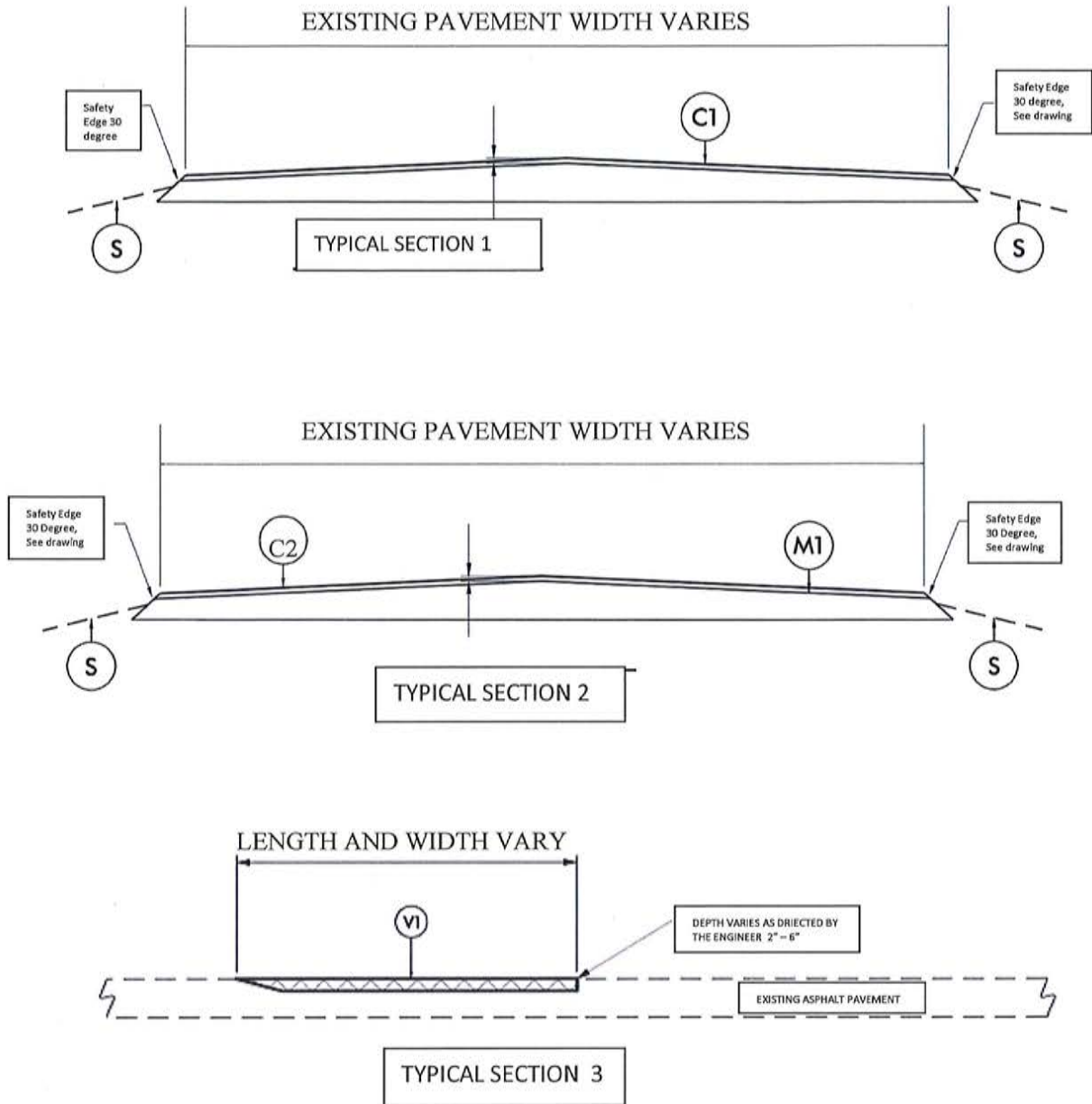
- B. As a further prerequisite to final payment, Contractor shall execute and deliver to Owner, in form approved by the Attorney, a receipt for all amounts paid or payable to Contractor under the Contract, and a release and waiver of all claim against Owner growing out of, or connected with, the Contract and furnish satisfactory evidence that all amounts due for labor, materials and other obligations under the Contract have been fully and finally settled or are fully covered by insurance protecting Owner, its officers, agents and employees as well as Contractor.
- C. If Owner declares a default of the Contract, and Surety completes said Contract, all payments after declaration of default and retainage held by Owner, if any, shall be paid to Surety and not to Contractor in accordance with terms of the Contract.

9.12 Acceptance of Final Payment

- A. Acceptance by Contractor of final payment shall release Owner and Engineer as agent of Owner from all claims and all liability to Contractor for all things done or furnished in connection with the work, and every act of Owner and others relating to or arising out of the work. No payment, however, final or otherwise, shall operate to release Contractor or his Sureties from obligations under the Contract and the performance, payment, and other bonds and warranties, as herein provided.

APPENDIX B

PAVEMENT TYPICAL SECTIONS



MILLING FOR PATCHING AND TIE-INS DETAIL

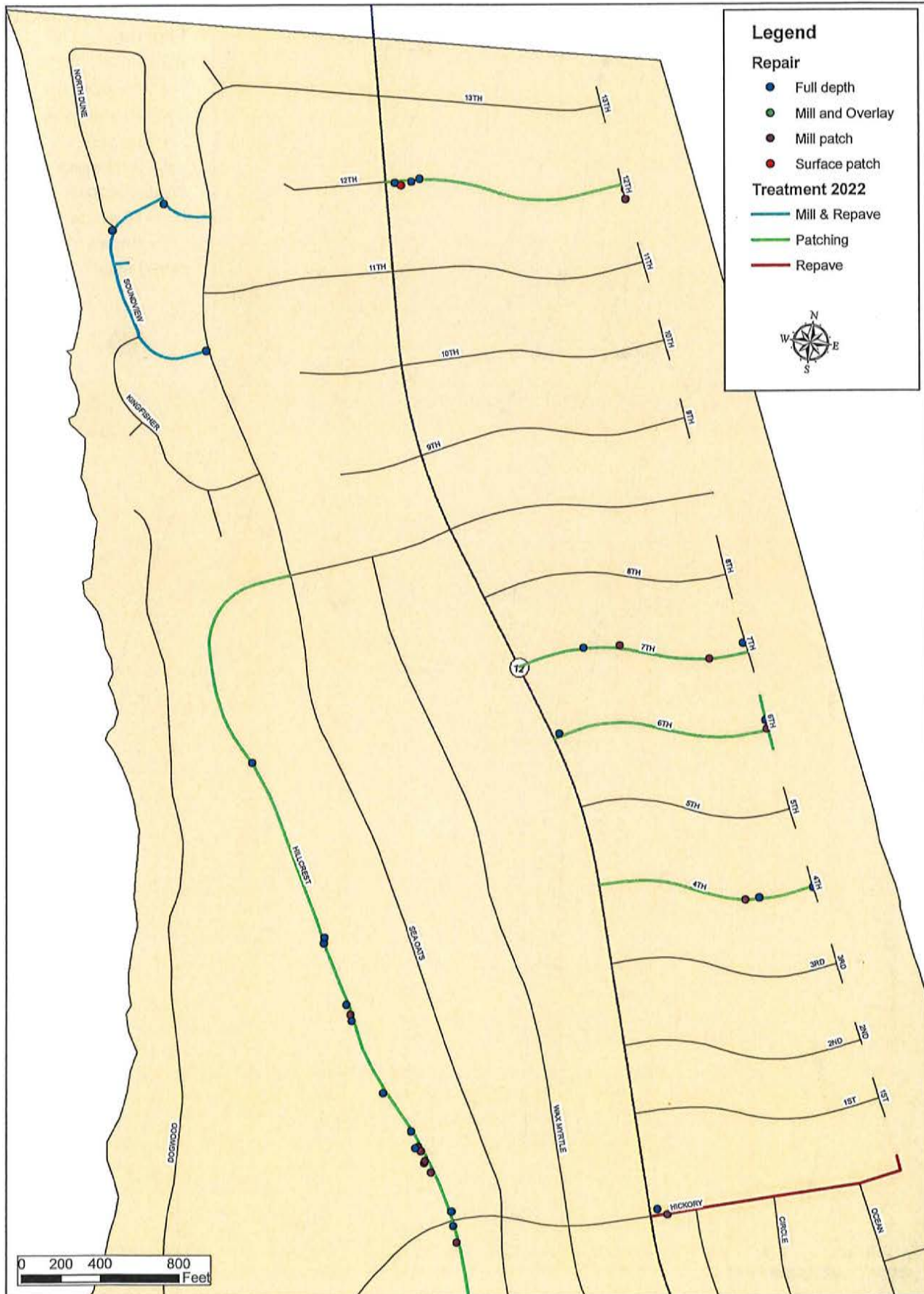
1. MILLING TO BE PERFORMED AS DIRECTED FOR PATCHING
2. MILLING FOR TIE IN ON MAINLINE AND Y-LINE TIE INS AS DIRECTED BY THE ENGINEER

PAVEMENT SCHEDULE	
C1	PROP. APPROX. 1.5" ASPHALT CONCRETE SURFACE COURSE, TYPE S9.5B, TO BE APPLIED AT AN AVERAGE RATE OF 168 LBS PER SQ. YD.
C2	PROP. APPROX. 2" ASPHALT CONCRETE SURFACE COURSE, TYPE S9.5 C, TO BE APPLIED AT AN AVERAGE RATE OF 224 LBS PER SQ. YD.
E	PROP. APPROX. 5 1/2" ASPHALT CONCRETE BASE COURSE, TYPE B25.0B, TO BE APPLIED AT AN AVERAGE RATE OF 627 LBS PER SQ. YD.
V1	MILL ASPHALT PAVEMENT, 1.5" TO 2" DEPTH
S	SHOULDER RECONSTRUCTION (SEE DETAIL)

APPENDIX C

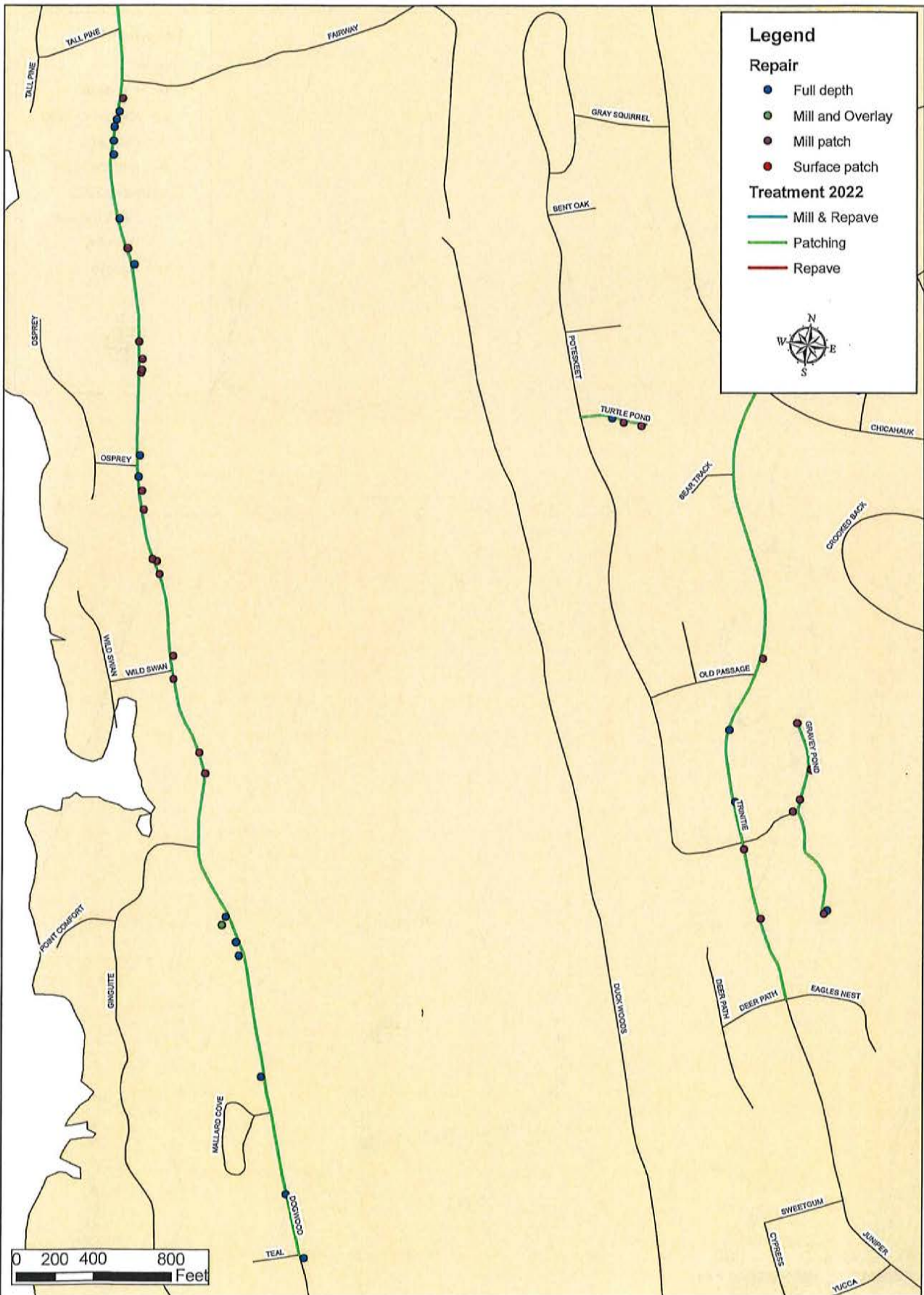
LOCATION MAPS

Town of Southern Shores Project # 22 PAV Map 1 of 4





Town of Southern Shores Project # 22 PAV Map 3 of 4



Town of Southern Shores Project # 22 PAV Map 4 of 4





AGENDA ITEM SUMMARY

MEETING DATE: March 15, 2022

ITEM TITLE: Consideration of Dominion Power Easement-Phase II Underground Project

ITEM SUMMARY:

Dominion Power has requested what they believe to be the final easement for their Phase II Underground project. The project will remove the last remaining overhead span of power lines. With this section under S. Dogwood Trail, they will remove the last two poles – one currently sitting on 160 S. Dogwood Trail and one at 162 Yaupon Trail.

Previously the Town Council approved a similar easement in April of 2021.

There are a few easements on private property that Dominion has not been able to secure and is requesting to use the Town's right of way. Dominion prefers to construct these projects through private easements to avoid any conflict associated with the use of the Town's right of way.

STAFF RECOMMENDATION: Staff recommends approval.

REQUESTED ACTION: A motion to authorize the Mayor to sign the requested easement.

ATTACHMENTS: A copy of the right of way easement requested by Dominion Power.



Right of Way Agreement

THIS RIGHT OF WAY AGREEMENT, is made and entered into this _____ day of _____, _____, by and between

TOWN OF SOUTHERN SHORES,
A North Carolina Municipal Corporation

("GRANTOR") and VIRGINIA ELECTRIC AND POWER COMPANY, a Virginia public service corporation, doing business in North Carolina as Dominion Energy North Carolina, with its principal office in Richmond, Virginia ("GRANTEE").

WITNESSETH:

1. That for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, **GRANTOR** grants and conveys unto **GRANTEE**, its successors and assigns, the perpetual right, privilege and non-exclusive easement over, under, through, upon and across the property described herein, for the purpose of transmitting and distributing electric power by one or more circuits; for its own internal telephone and other internal communication purposes directly related to or incidental to the generation, distribution, and transmission of electricity, including the wires and facilities of any other public service company in aid of or to effectuate such internal telephone or other internal communication purposes; and for lighting purposes; including but not limited to the right:

Initials: _____

This Document Prepared by Virginia Electric and Power Company and should be returned to:
Dominion Energy North Carolina, 304 NC Highway 11N, Ahoskie, NC 27910.

(Page 1 of 6 Pages)
NCROW No(s). 68-22-0011

Form No. 721043-1 (May 2019)
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Right of Way Agreement

1.1 to lay, construct, operate and maintain one or more lines of underground conduits and cables including, without limitation, one or more lighting supports and lighting fixtures as **GRANTEE** may from time to time determine, and all wires, conduits, cables, transformers, transformer enclosures, concrete pads, manholes, handholes, connection boxes, accessories and appurtenances desirable in connection therewith; the width of said easement shall extend FIFTEEN (15') feet in width across the lands of **GRANTOR**; and

2. The easement granted herein shall extend across the lands of **GRANTOR** situated in DARE COUNTY, North Carolina, as more fully described on Plat(s) Numbered 68-22-0011, attached to and made a part of this Right of Way Agreement; the location of the boundaries of said easement being shown in broken lines on said Plat(s), reference being made thereto for a more particular description thereof.

3. All facilities constructed hereunder shall remain the property of **GRANTEE**. **GRANTEE** shall have the right to inspect, reconstruct, remove, repair, improve, relocate on the easement, and make such changes, alterations, substitutions, additions to or extensions of its facilities as **GRANTEE** may from time to time deem advisable.

4. **GRANTEE** shall have the right to keep the easement clear of all buildings, structures, trees, roots, undergrowth and other obstructions which would interfere with its exercise of the rights granted hereunder, including, without limitation, the right to trim, top, retrim, retop, cut and keep clear any trees or brush inside and outside the boundaries of the easement that may endanger the safe and proper operation of its facilities. All trees and limbs cut by **GRANTEE** shall remain the property of **GRANTOR**.

5. For the purpose of exercising the right granted herein, **GRANTEE** shall have the right of ingress to and egress from this easement over such private roads as may now or hereafter exist on the property of **GRANTOR**. The right, however, is reserved to **GRANTOR** to shift, relocate, close or abandon such private roads at any time. If there are no public or private roads reasonably convenient to the easement, **GRANTEE** shall have such right of ingress and egress over the lands of **GRANTOR** adjacent to the easement. **GRANTEE** shall exercise such rights in such manner as shall occasion the least practicable damage and inconvenience to **GRANTOR**.

Initials: _____

(Page 2 of 6 Pages)
NCROW No(s). 68-22-0011

Form No. 721043-2 (May 2019)
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Right of Way Agreement

6. **GRANTEE** shall repair damage to roads, fences, or other improvements (a) inside the boundaries of the easement (subject, however, to **GRANTEE**'s rights set forth in Paragraph 4 of this Right of Way Agreement) and (b) outside the boundaries of the easement and shall repair or pay **GRANTOR**, at **GRANTEE**'s option, for other damage done to **GRANTOR**'s property inside the boundaries of the easement (subject, however, to **GRANTEE**'s rights set forth in Paragraph 4 of this Right of Way Agreement) and outside the boundaries of the easement caused by **GRANTEE** in the process of the construction, inspection, and maintenance of **GRANTEE**'s facilities, or in the exercise of its right of ingress and egress; provided **GRANTOR** gives written notice thereof to **GRANTEE** within sixty (60) days after such damage occurs.

7. **GRANTOR**, its successors and assigns, may use the easement for any reasonable purpose not inconsistent with the rights hereby granted, provided such use does not interfere with **GRANTEE**'s exercise of any of its rights hereunder. **GRANTOR** shall not have the right to construct any building, structure, or other above ground obstruction on the easement; provided, however, **GRANTOR** may construct on the easement fences, landscaping (subject, however, to **GRANTEE**'s rights in Paragraph 4 of this Right of Way Agreement), paving, sidewalks, curbing, gutters, street signs, and below ground obstructions as long as said fences, landscaping, paving, sidewalks, curbing, gutters, street signs, and below ground obstructions do not interfere with **GRANTEE**'s exercise of any of its rights granted hereunder. In the event such use does interfere with **GRANTEE**'s exercise of any of its rights granted hereunder, **GRANTEE** may, in its reasonable discretion, relocate such of its facilities as may be practicable to a new site designated by **GRANTOR** and acceptable to **GRANTEE**. In the event any such facilities are so relocated, **GRANTOR** shall reimburse **GRANTEE** for the cost thereof and convey to **GRANTEE** an equivalent easement at the new site.

8. **GRANTEE** shall have the right to assign or transfer, without limitation, to any public service company all or any part of the perpetual right, privilege and easement granted herein.

9. If there is an Exhibit A attached hereto, then the easement granted hereby shall additionally be subject to all terms and conditions contained therein provided said Exhibit A is executed by **GRANTOR** contemporaneously herewith and is recorded with and as a part of this Right of Way Agreement.

10. Whenever the context of this Right of Way Agreement so requires, the singular number shall mean the plural and the plural the singular.

Initials: _____

(Page 3 of 6 Pages)
NCROW No(s). 68-22-0011

Form No. 721043-3 (May 2019)
© 2021 Dominion Energy



Right of Way Agreement

11. **GRANTOR** covenants that it is seised of and has the right to convey this easement and the rights and privileges granted hereunder; that **GRANTEE** shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement, rights and privileges; and that **GRANTOR** shall execute such further assurances thereof as may be reasonably required.

12. The individual executing this Right of Way Agreement on behalf of **GRANTOR** warrants that they have been duly authorized to execute this easement on behalf of said County.

IN WITNESS WHEREOF, GRANTOR has caused its name to be signed hereto by authorized officer or agent, described below, on the date first above written.

APPROVED AS TO FORM:

TOWN OF SOUTHERN SHORES

By:

(Name)

Title:

(Title)

State of _____

County of _____, to-wit:

I, _____, a Notary Public in and for the State of

_____ at Large, do hereby certify that this day personally appeared before me in my jurisdiction aforesaid

(Name of officer or agent)

(Title of officer or agent)

on behalf of TOWN OF SOUTHERN SHORES, North Carolina, whose name is signed to the

foregoing writing dated this _____ day of _____, 20____, and acknowledged the same before me.

Given under my hand _____, 20____.

Notary Public (Print Name)

Notary Public (Signature)

My Commission Expires: _____

(Page 4 of 6 Pages)



Right of Way Agreement

EXHIBIT A

This Exhibit A shall be attached to and made a part of the RIGHT OF WAY AGREEMENT executed by the undersigned **GRANTOR(s)** on the _____ day of _____, _____. The following terms and conditions are incorporated therein:

It is the intention of both parties hereto that GRANTOR shall maintain the ability to fulfill its statutory and legal responsibilities regarding the provision of public streets and the maintenance thereof.

Pursuant to that end, this Right of Way Agreement is for the conveyance of underground electrical rights only. GRANTEE shall have the right to lay, construct, operate and maintain said underground facilities, including underground conduits and cables, and all of the following underground equipment and facilities: wires, conduits, cables, transformers, transformer enclosures, concrete pads, manholes, handholes, connections boxes and other accessories and appurtenances necessary for the distribution and transmission of electricity.

GRANTEE'S right to lay, construct, operate and maintain underground facilities within the designated easement shall not interfere with use of the public street by the GRANTOR or by the general public.

GRANTOR reserves the right to maintain and, if necessary, replace the street paving and street improvements.

(SEAL)

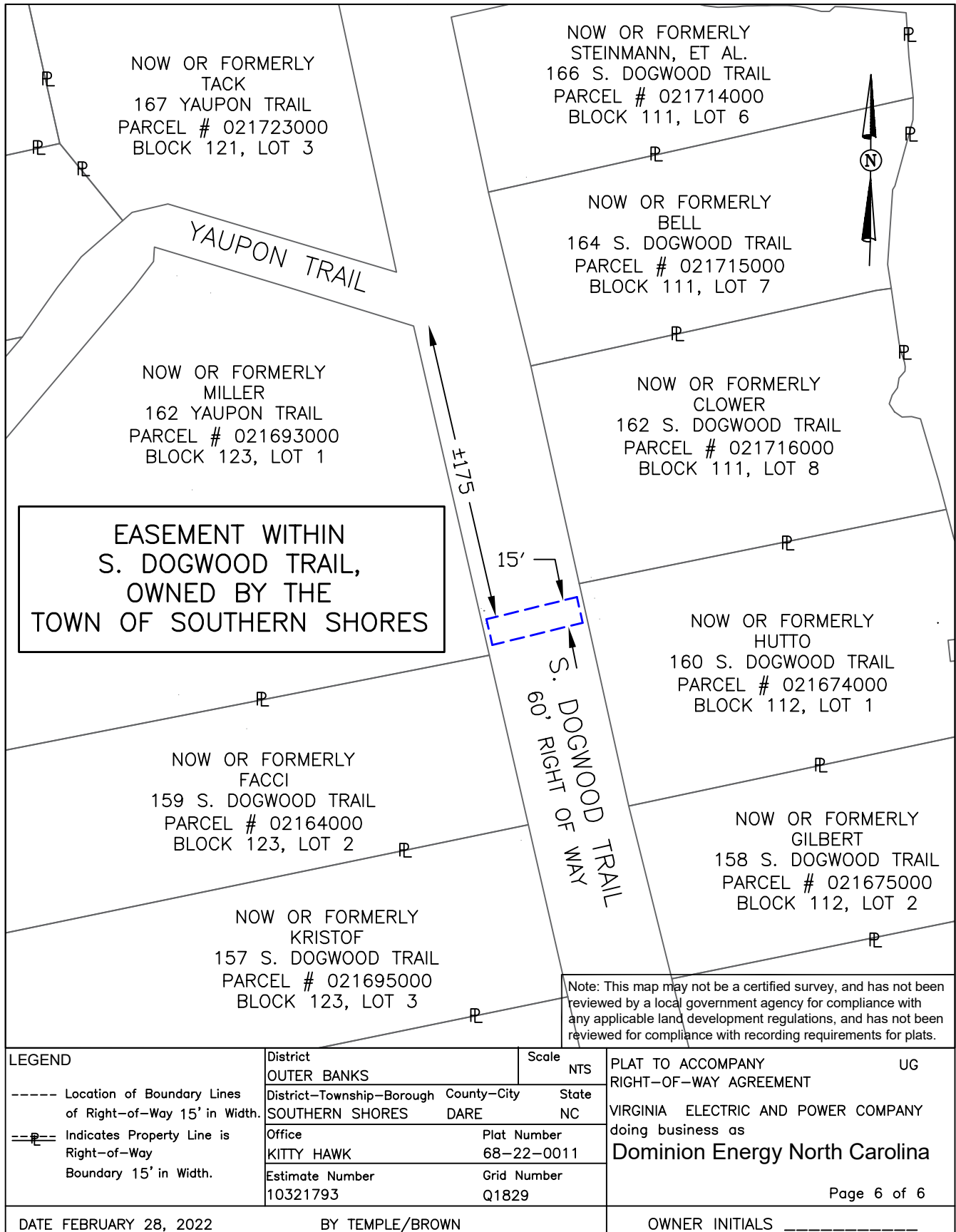
Elizabeth Morey, Mayor
Town of Southern Shores
(GRANTOR)

(SEAL)

Shaun Reilly, Authorized Representative
Dominion Energy North Carolina
(GRANTEE)

(Page 5 of 6 Pages)

NCROW No(s). 68-22-0011





AGENDA ITEM SUMMARY

MEETING DATE: March 15, 2022

ITEM TITLE: Consideration of Resolution 2022-03-02 Authorizing the process of collection of the remaining beach nourishment easements.

ITEM SUMMARY:

As required by the permit issued for the beach nourishment project by the Division of Coastal Management, the Town must secure easements from property owners who abut the nourishment area. 148 easements were required for this project, 136 from the Town of Southern Shores and 12 for the northern ending taper from the Town of Duck. At present, there are 13 outstanding easements to acquire from 11 individual property owners. Staff is optimistic and hopeful that the remaining easement will be provided either voluntarily or by going through a legal process to confirm our existing authority to construct the project. However, as the Town is required to have these easements before constructing the project, acquisition by condemnation may be required. The easement only grants the Town the ability to perform functions necessary to place sand along the beach.

STAFF RECOMMENDATION: Staff recommends approval.

REQUESTED ACTION: A motion to approve adoption of the presented resolution.

ATTACHMENTS: Copy of Resolution 2022-03-02



Town of Southern Shores

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RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA AUTHORIZING LITIGATION TO CONFIRM AND, IF NECESSARY, CONDEMN BEACH NOURISHMENT EASEMENTS

(Resolution #2022-3-02)

WHEREAS, the Town of Southern Shores (the “Town”) is located adjacent to the Atlantic Ocean; and

WHEREAS, due to erosion, both constant and sudden, the Town plans to construct beach erosion control or flood and hurricane protection works, including beach renourishment upon the ocean beaches located within the Town (collectively “Beach Protection”); and

WHEREAS, the Town has engaged in and is participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving Beach Protection via beach nourishment scheduled to occur in the summer of 2022 pursuant to United States Army Corp. of Engineers Permit SAW-2021-00569 (the “2022 Beach Nourishment Project”) including, but not limited to, the acquisition of any property that may be required as a source for beach nourishment; and

WHEREAS, for the purposes allowed by North Carolina General Statute Section 40A-3(b1)(10) and particularly in connection with the 2022 Beach Nourishment Project beach nourishment project to be undertaken, the Southern Shores Town Council hereby determines that it is desirable, necessary and in the public interest to ensure that the Town has acquired a limited easement over certain portions of each oceanfront property in the nourishment project area, which extends from southern boundary of the Town along the Atlantic Ocean and ocean beach to the northern boundary of the Town (“the Project Area”); and

WHEREAS, under North Carolina law and pursuant to various legal theories, the Town may maintain the public’s public trust easement in the privately owned portion of the State’s ocean beaches via the nourishment and renourishment of said ocean beaches. However, some permitting agencies continue to require the Town to provide voluntary beach nourishment easements documents or beach nourishment easements documented by action of the judicial system in order to issue and allow use of permits for beach nourishment projects; and

WHEREAS, the Town finds that it is prudent to obtain beach nourishment easements by voluntary conveyance to the greatest extent possible prior to the implementation of the 2022 Beach Protection Project; and

WHEREAS, the Town believes that any easement interest needed in each oceanfront property is of minimal or *de minimis* value and is worth considerably less than the amount by which work done in connection with the 2022 Beach Nourishment Project will preserve, enhance or increase the value of each affected property; and

WHEREAS, the Town anticipates that it may be unable to obtain documentation that the Town has acquired the necessary easement rights in some of the properties in the Project Area by the owners' voluntary conveyance; and

WHEREAS, it is necessary that the Town confirm or otherwise obtain documentation that it holds the necessary limited easement rights on properties within the Project Area so that the Project may proceed without undue delay; and

WHEREAS, the Town finds that it is in the interest of the public's health, safety, morals and general welfare that the Town should move forward to obtain voluntary conveyance of beach nourishment easements verified by documentation or judicial process in support of future Beach Protection projects.

NOW, THEREFORE BE IT RESOLVED, that the Town Council provides as follows:

1. The Town Manager and Town Attorney or their designees are authorized and directed to procure beach nourishment easements sufficient to perform the 2022 Beach Nourishment Project from the owners of the affected properties and may negotiate easement reasonable accommodations satisfactory to the Town and its consultants.
2. The Town Manager and Town Attorney or their designees are authorized and directed to procure such easements or documentation thereof: (i) voluntarily, if possible; (ii) through litigation confirming public authority to perform the 2022 Beach Nourishment Project upon the ocean beaches of the Town; or (iii) through the use of eminent domain via the necessary proceedings under Chapter 40A of the North Carolina General Statutes to the extent that the Town does not already possess the rights to perform the 2022 Beach Nourishment Project upon the ocean beaches of the Town. In so doing, the Town Manager and Town Attorney or their designees may take any actions necessary in connection with the acquisition process.
3. For each ocean front property in the Project Area, the acquisition, by condemnation if necessary, shall be for purposes allowed by North Carolina General Statute Section 40A-3(b1)(10) and particularly as and to the extent needed in connection with the 2022 Beach Nourishment Project, an easement in each such property over the ocean beach area of the property extending landward from the mean high water mark to the following locations, whichever is most waterward: the Vegetation Line; the toe of the Frontal or Primary Dune; or the Erosion Escarpment of the Frontal or Primary Dune. As used herein, the capitalized terms shall have the meaning as set forth in 15A of the North Carolina Administrative Code, Section

7H.0305. Such easement shall be effective immediately upon acquisition and may be perpetual or limited in duration so long as sufficient to perform the 2022 Beach Nourishment Project and, if possible, future maintenance thereof.

4. The recording with the Dare County Register of Deeds by the Town Manager or his designee of a beach nourishment easement negotiated by the Town Manager and/or Town Attorney or their designee acts an acceptance of the beach nourishment easement and rights granted therein by the Town of Southern Shores.

Adopted this 15 day of March, 2022.

Elizabeth Morey, Mayor

Attest:

Sheila Kane, Town Clerk