



TOWN OF SOUTHERN SHORES
TOWN COUNCIL REGULAR MEETING

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

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

www.southernshores-nc.gov

PITTS CENTER

Tuesday, November 12, 2024 at 5:30 PM

AGENDA

Call Meeting to Order

Pledge of Allegiance

Moment of Silence

Amendments to / Approval of Agenda

Consent Agenda

- [1.](#) Budget Amendment-Recognize Revenues Received for Cemetery
- [2.](#) Resolution-A Resolution in Support of Reinstating an Area of Environmental Concern (AEC) Designation for Jockey's Ridge State Park
3. Minutes Approval-emailed
- [4.](#) Tax Pickups & Releases

Staff Reports

Planning/Deputy Town Manager

Monthly Permit Report

Planning Board Update

Police Chief

Fire Chief

Town Manager

Veterans Day Ceremony Update

Town Attorney

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

Old Business

New Business

- [5.](#) Town Hall Renovations-Consideration of Bid Award
- [6.](#) Juniper/Trinitie Culvert Bridge Replacement- Consideration of Construction Administration & Construction Engineering Inspection contract
- [7.](#) Policy Amendment-Voluntary Leave Sharing
- [8.](#) Floating Holiday Policy
- [9.](#) TCA-24-03 Sec. 10-1. - Municipal cemetery established; cemetery fund; monitoring of operations
- [10.](#) Tourism Board Reappointment

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

Council Business

Adjourn



Town of Southern Shores

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A Resolution in Support of Reinstating an Area of Environmental Concern (AEC) Designation for Jockey's Ridge State Park

Resolution #2024.11.01

WHEREAS, Jockey's Ridge State Park (JRSP) is the most visited State Park in North Carolina and is pristine natural monument to the rugged landscape that attracted people to the area and also a tribute to Outer Banks local Carolista Baum, a role model who proved that one person can make a difference and protect our community's threatened natural resources; and

WHEREAS, the North Carolina Coastal Resources Commission (CRC) protects its beautiful and fragile coastal resources thanks in part to the Coastal Area Management Act and the rules and policies of the CRC; and

WHEREAS, JRSP is an existing state park, a nature preserve, and contains unique geological formations as identified by the N.C. State Geologist, and therefore meets the criteria of AEC designation as established in N.C.G.S. 113A-113; and

WHEREAS, N.C.G.S. 113A-115 states that AEC designations should not be removed unless it is found that the conditions upon which the original designation was based have been substantially altered; and

WHEREAS, at an August 6, 2024, special meeting, the CRC voted unanimously to begin the process of reinstating AEC protections for Jockey's Ridge to include a prohibition on removing sand from the park and restrictions on development immediately adjacent to the park; and

WHEREAS, JRSP is an important educational, scientific, and scenic resource that would be jeopardized by uncontrolled or incompatible development; and

WHEREAS, the preservation of this invaluable resource of regional and statewide significance is the objective of this designation; and

WHEREAS, a public hearing regarding the AEC for JRSP was held at the Jockey's Ridge Visitor's Center, 300 West Carolista Drive, Nags Head, North Carolina 27959, on Tuesday, October 15, 2024, at 1:00 p.m. and public comment will be heard through Monday, November 4 2024; now, therefore be it

RESOLVED that the Town Council for the Town of Southern Shores does hereby formally submit this resolution in support of the re-establishment an Area of Environmental Concern Designation for Jockey's Ridge State Park, and allow it the special protections granted by the designation.

This the 28th day of October, 2024.



Elizabeth Morey

Elizabeth Morey
Mayor

Sheila Kane

Sheila Kane
Town Clerk

**TOWN OF SOUTHERN SHORES
TAX DEPARTMENT**

11/12/2024

PICKUPS

RELEASES

August Real

\$ 39.83

TOTAL

\$0.00

\$ 39.83



Agenda Item Summary Sheet

Date: 11/12/24

Item #: 5

Item Title: Town Hall Renovations-Consideration of Bid Award

Item Summary:

Staff Recommendation and Requested Action:

The Town bid the Southern Shores Town Hall Renovation project with bids due on October 10. Only two bids were received, and the project was readvertised. The same two companies submitted bids on October 18.

Sussex Development Corporation	\$512,041.23
AR Chesson Construction	\$522,000

Sussex is prepared to perform a Value Engineering (VE) exercise if they are selected as the contractor of choice. Staff would like to work with the project architect and with Sussex to see where savings can be made.

Authorize the town manager to provide Sussex Development Corporation with a Letter of Intent to enter into an agreement for the remodel construction project at town hall.

As staff has previously shared, the town’s door access control system is no longer supported and very near its end of use. A new system was included with the bids to remodel at an additional cost. This system needs to be replaced regardless of the remodeling project. In the event an agreeable price for the remodeling is not met, staff requests the Town Council authorize the town manager to enter into an agreement to replace the door access control system at an amount not to exceed \$94,573.

Provided below is a summary of expenses budgeted as part of FY 24/25 infrastructure. Funds are contained in this year’s budget for all projects listed.

EXPENSES		BUDGETED AMOUNT	
TOWN HALL REMODEL			
Bid Amount	\$512,041	\$380,000	
doors	\$133,087		
Pitts Center/PD doors	\$65,556		
Architect	\$7,000		
Town Hall Remodel	\$717,684		
DOORS (absent remodel)			
	\$94,573		
BRIDGE			
Contract Amount	\$1,667,179		
CA	\$60,000		
CEI	\$125,038		
Total Bridge	\$1,852,217	\$2,100,000	
STREETS			
Streets year 3	\$1,006,704	\$1,194,000	
Streets year 4	\$1,000,000	\$1,000,000	
Total Streets	\$2,006,704	\$2,194,000	
			EXCESS FUNDS
All projects	\$4,576,605	\$4,674,000	\$97,395
less Town Hall remodel	\$3,960,494	\$4,674,000	\$713,506

Requested Action: Authorize town manager to work with Sussex Development to reduce the cost of the town hall remodeling project. As the door access control system needs replacing regardless of the awarding of the contract for remodeling, staff requests the Town Council authorize the town manager to enter a contract for its replacement in an amount not to exceed \$94,573.



Agenda Item Summary Sheet

Date: 11/12/24

Item #: 6

Item Title: Consideration of Construction Administration and Construction Engineering and Inspection Services contracts for the Trinitie Trail Bridge Project

Item Summary: After securing the contract for the construction of the Trinitie Trail Bridge, we now need to get Construction Administration (CA) and Construction Engineering and Inspection (CEI) services under contract.

Construction Administration is the process where details of a construction project, from inception to completion, are carefully managed and controlled. This includes the evaluation and interpretation of construction documents, supervision during the construction phase, and ensuring that all aspects of the project are being conducted as per the pre-set guidelines. Tasks include visits to the site and observation of construction, review requests for information, plan revisions and providing as built drawings. Construction Engineering and Inspection services provide materials sampling and testing, monitoring of the contractor's on-site construction activities, as well as inspecting materials in accordance with plans, specifications, and special provisions to ensure that the overall construction contract meets project guidelines.

Attached is a proposal from the Engineer of Record for the project, Kimley-Horn, for CA in an amount not to exceed \$60,000 and for CEI Services from NC DOT in an amount not to exceed \$125,038. The project is being built to NC DOT specifications so that it can be included in their bridge inspection program and become eligible for future State and Federal funding.

Staff Recommendation and Requested Action: Authorize town manager to sign and enter into both agreements.

Attachments: Letter Agreement for Professional Services for Construction Administration Services for Trinitie Trail Bridge Replacement Project

Agreement for Construction Engineering and Inception Services for the Trinitie Trail Bridge Replacement Project



October 31, 2024

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

Re: Letter Agreement for Professional Services for
 Construction Administrative Services for Trinitie Trail Bridge Replacement Project

Dear Mr. Ogburn,

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

Project Understanding

The Town of Southern Shores has requested Kimley-Horn (the “Consultant”) to perform construction phase services for the Trinitie Trail Bridge Replacement (the “Project”) project. Specifically, the Consultant as the Engineer of Record for the Project will provide limited construction administration services while a Construction Engineering and Inspection (CEI) team (hired by the Town of Southern Shores) will provide full time construction administration, daily inspection, field reporting, and materials testing.

Scope of Services

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

Task 1 – Project Administration (Kimley-Horn)

1.1 Meetings. Consultant will attend virtual meetings with the Contractor, Town, and other stakeholders as directed by the Town. *Consultant assumes four (4) meetings.*

1.2 Visits to Site and Observation of Construction. Consultant will make site visits as directed by the Town to observe the progress of the work. Such observations will not be exhaustive or extend to every aspect of Contractor's work. Observations will to be limited to spot checking, selective measurement, and similar methods of general observation. Based on information obtained during site visits, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep Town informed of the general progress of the work.

Consultant will not supervise, direct, or have control over Contractor's work, nor shall Consultant have authority to stop the Work or have responsibility for the means, methods, techniques, equipment choice and usage, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for any failure of Contractor to comply with any laws. Consultant does not guarantee the performance of any Contractor and has no responsibility for Contractor's failure to



perform its work in accordance with the Contract Documents. *Consultant assumes four (4) site visits will be required with up to two (2) people.* Site visits include:

- Preconstruction meeting
- Two (2) visits during construction
- Final Walk-Through

1.3 Review Requests for Information. Consultant will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents as requested by the Town. Any orders authorizing variations from the Contract Documents will be made by Town. *Consultant assumes there will be fifteen (15) requests for information submitted for review.*

1.4 Plan Revisions. Consultant may be required to revise the contract and/or plan documents based on unknown field conditions, not related to errors and omissions. Consultant will make recommendations related to Plan Revisions submitted or proposed by the Contractor. *Consultant assumes there will be up to five (5) plan revisions.*

1.5 Record Drawings (As-Built Drawings). Consultant will develop a Record Drawing set of plans using the original contract drawings and updating them based on any approved plan revisions that arose during construction of the project. At the completion of the project, the Record Drawings will be provided to the Town in both PDF and DGN (Microstation) format for their record.

1.6 Review of Submittals, Shop Drawings and Approved Products List. Consultant will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, schedules, procedures of construction, or to related safety programs. Any action in response to a shop drawing will not constitute a change in the Contract Documents, which can be changed only through the Change Orders.

Consultant will review the shop drawing submittals with respect to the NCDOT Approved Products for compliance with the plans and specifications. *Consultant assumes approximately twelve (12) items will require review and approval by means of shop drawing submittals.*

1.7 Change Orders. Consultant may recommend Change Orders to the Client and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

1.8 Substitutes and "or-equal". Consultant will evaluate and determine the acceptability of substitute, or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents.

1.9 Disputes between Client and Contractor. Consultant will, if requested by Client, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents. In rendering decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision.



Limitation of Responsibilities. Consultant shall not be responsible for the acts or omissions of any Construction Contractor, any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. This does not apply to the Consultant. Consultant shall not have the authority or responsibility to stop the work of any Contractor.

Services Not Included

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

- Additional meetings and site visits, beyond those listed above
- Recommendations with Respect to Defective Work
- Pay Application Review
- Engineers Weekly Summary
- Review Subcontract Approval Forms
- Review of Supplemental Agreements
- Review of Wage Interviews
- Final Notice of Acceptability of Work
- Inspections and testing
- Services beyond anticipated construction schedule

Additional Services

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

Information Provided By Town

Consultant shall be entitled to rely on the completeness and accuracy of all information provided by the utility Construction Contractor, Town, or the Town's consultants or representatives. The Town or the Construction Contractor shall provide all information requested by Kimley-Horn, including but not limited to as-built CAD files, PLS sealed electronic as-builts, and Contractor redline drawings indicating any deviations from the design, provided by the Contractor.

Fee and Expenses

Kimley-Horn will perform the services in Task 1.1 thru Task 1.9 on a labor fee plus expense basis with the maximum labor fee shown below. The following fee breakdown is not meant to be restrictive but meant to give a rough estimate of relative effort associated with each subtask. Some tasks may require more effort than shown below, while others may require less.



Task No.	Task	Fee Estimate
1.1	Meetings	\$4,000
1.2	Visits to Site and Observation of Construction	\$22,000
1.3	Review Requests for Information	\$8,000
1.4	Plan Revisions	\$5,000
1.5	Record Drawings (As-Built Drawings)	\$5,000
1.6	Review of Submittals, Shop Drawings and Approved Products List	\$8,000
1.7 – 1.9	Change Orders, Substitutes and "or-equal", Disputes between Client and Contractor	\$8,000
Total		\$60,000.00

Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client.

Labor fee will be billed on an hourly basis according to our then-current rates. Direct reimbursable expenses such as express delivery services, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, an invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Closure

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

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

____ Please email all invoices to _____

____ Please copy _____

Kimley»Horn

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

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

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



Seth A. Denney, P.E.

Vice President



Andrew L. Phillips, P.E.

Project Manager

Town of Southern Shores

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachment – Standard Provisions



KIMLEY-HORN AND ASSOCIATES, INC.

STANDARD PROVISIONS

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
 - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
 - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. The Client will remit all payments electronically to:
 - Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
 - Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
 - Account Number: 2073089159554
 - ABA#: 121000248



- c. The Client will send the project number, invoice number and other remittance information by e-mail to payments@kimley-horn.com at the time of payment.
 - d. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
 - e. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - f. If Kimley-Horn initiates legal proceedings to collect payment, it shall recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - g. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Deliverables.** All documents, data, and other deliverables prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's deliverables, or any reuse of the deliverables without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and the Client shall indemnify, defend and hold Kimley-Horn harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the deliverables prepared by Kimley-Horn, the hardcopy shall govern.
- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates ("Intellectual Property") in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn's services include providing Client with access to or a license for Kimley-Horn's (or its affiliates') proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> ("the License Agreement") which terms are incorporated herein by reference.
- 7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot



and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Kimley-Horn and Kimley-Horn's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs, attorneys' fees, or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by Kimley-Horn under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation.



Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

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



for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

AGREEMENT OVERVIEW

NORTH CAROLINA
DARE COUNTY

DATE: November 12, 2024
PROJECTS NUMBERS:
WBS ELEMENTS: 362.49.4939

PARTIES TO THE AGREEMENT:

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION (“Department”)

AND

TOWN OF SOUTHERN SHORES (“Town”)

The purpose of this Agreement is to identify the participation in project costs, project delivery and/or maintenance, by the parties to this Agreement, as further defined in this Agreement.

SCOPE OF PROJECT (“Project”): Review of project plans and documents for Trinite Trail bridge in Southern Shores and ensure that all work is performed in accordance with the plans.

ESTIMATED COST TO TOWN: \$125,038
ESTIMATED COST OF THE PROJECT: \$1,667,178.70

PAYMENT TERMS: The Town of Southern Shores shall make a total of two (2) payments to the Department under this Agreement. The Town of Southern Shores shall submit the first payment to the Department in the amount of \$62,519 upon the execution of this Agreement. The second payment will be due upon the completion of the Project and shall be in an amount equal to the difference between the actual cost of all work performed by the Department and the amount of the first payment.

MAINTENANCE: Not Applicable

EFFECTIVE DATES OF AGREEMENT:

START: Upon Full Execution of this Agreement
END: When work is complete and all terms are met.

This Agreement is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the **Department** and the **Town of Southern Shores**, hereinafter referred to as the **Town**; and collectively referred to as the **Parties**.

The **Parties** to this Agreement, listed above, intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this

Agreement and refer to this Agreement, represents the entire understanding between the **Parties** with respect to its subject matter and supersedes any previous communication or agreements that may exist.

DRAFT

I. WHEREAS STATEMENTS

WHEREAS, this Agreement is made under the authority granted to the **Department** by the North Carolina General Assembly under General Statutes of North Carolina (NCGS), particularly Chapter 136-18(27); and,

WHEREAS, the **TOWN** has requested that the **Department** provide review of certain items related to transportation improvements that will either affect the State Highway System or will be eligible for funding in the future with Federal or State funding administered by the **Department**; and,

WHEREAS, the **Parties** hereto wish to enter into an agreement for scoped work to be performed or provided by the **Department** with reimbursement for the costs thereof by the **Town** as hereinafter set out.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the **Parties** do hereby covenant and agree, each with the other, as follows:

II. RESPONSIBILITIES

- i. The **Town** will prepare plans or documents related to the construction of the Trinitie Trail bridge and shall submit to the Department for review and approval.

The Department shall be responsible for Construction Engineering and Inspection Services and Construction Materials Inspection. The work that will be completed includes, but is not limited to, the removal of the existing culvert bridge in Canvas Back Canal and replacement with a cored slab bridge located at the Juniper and Trinitie Trail intersection. The technical specifications for the project define the scope of the CEI Services.

- ii. The **Department** will review said plans and documents and ensure compliance with the same, and provide comments and/or approval back to the **Town**, as applicable.
- iii. The **Town** shall be responsible for payment as shown in the **COSTS AND FUNDING** Provision.

III. COSTS AND FUNDING

A. PROJECT COSTS

The **Town** shall reimburse the **Department** 7.5% of the actual cost of all work performed by the **Department**, including administrative costs. Based on the estimated cost of \$1,667,178.70, the **Town** shall submit payment for \$125,038 to the **Department's** Fiscal Section upon execution of this Agreement, per the attached "Remittance Guidance." Both **Parties** understand that this is an estimated cost and is subject to change.

B. ADJUSTMENT OF FUNDING

Upon completion of the project, if actual costs exceed the amount of payment, the **Town** shall reimburse the **Department** any under payment within sixty (60) days of invoicing by the **Department**. The **Department** will charge a late payment penalty and interest on any unpaid balance due in accordance with G. S. 147-86.23. If the actual cost of the work is less than \$1,667,178.70, the **Department** will reimburse the **Town** any overpayment

IV. STANDARD PROVISIONS

A. AGREEMENT MODIFICATIONS

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all **Parties** by means of a written Supplemental Agreement.

B. ASSIGNMENT OF RESPONSIBILITIES

The **Department** must approve any assignment or transfer of the responsibilities of the **Town** set forth in this Agreement to other parties or entities.

C. AGREEMENT FOR IDENTIFIED PARTIES ONLY

This Agreement is solely for the benefit of the identified **Parties** to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

D. OTHER AGREEMENTS

The **Town** is solely responsible for all agreements, contracts, and work orders entered into or issued by the **Town** to meet the terms of this Agreement. The **Department** is not responsible for any expenses or obligations incurred for the terms of this Agreement except those specifically eligible for the funds and obligations as approved by the **Department** under the terms of this Agreement.

E. TITLE VI

The other party to this Agreement shall comply with Title VI of the Civil Rights Act of 1964 (Title 49 CFR, Subtitle A, Part 21) and related nondiscrimination authorities. Title VI and related authorities prohibit discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

F. FACSIMILE

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the **Parties** agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

G. AUTHORIZATION TO EXECUTE

The **Parties** hereby acknowledge that the individual executing this Agreement has read this Agreement, conferred with legal counsel, fully understands its contents, and is authorized to execute this Agreement and to bind the respective **Parties** to the terms contained herein.

H. DEBARMENT POLICY

It is the policy of the **Department** not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the **Town** certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

I. INDEMNIFICATION

To the extent authorized by state and federal claims statutes, the **Town** shall be responsible for its actions under the terms of this agreement and save harmless the FHWA (if applicable), the **Department**, and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claim for payment, damages and/or liabilities of any nature, asserted against the **Department** in connection with this Agreement. The **Department** shall not be liable and shall be held harmless from any and all third-party claims that might arise on account of the **Town's** negligence and/or responsibilities under the terms of this agreement.

J. AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

K. DOCUSIGN

The **Department** and the **Town** acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the **Department** or **Town**, to execute this Agreement. By selecting "I Agree", "I Accept", or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, the **Department** and the **Town** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes the **Department's** signature as if actually signed by the **Department** in writing or the **Town's** signature as if actually signed by the **Town** in writing.

The **Department** and the **Town** also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. The **Department** and the **Town** acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

L. GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor’s Cabinet Agencies (i.e. Administration, Adult Corrections, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

DRAFT

SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, on the part of the **Department** and the **Town** by authority duly given.

(DOCUSIGN ONLY)

Authorized Signer: _____

Print Name: _____

Title: _____

Date Signed: _____

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

TOWN OF SOUTHERN SHORES

FED TAX ID NO: _____

REMITTANCE ADDRESS: _____

Finance Officer: _____

Print Name: _____

Date Signed: _____

DEPARTMENT OF TRANSPORTATION

BY: _____

TITLE: _____

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (DATE)

SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, on the part of the **Department** and the **Town** by authority duly given.

(INK SIGNATURES ONLY)

ATTEST: _____ Authorized Signer: _____

BY: _____ Print Name: _____

TITLE: _____ Title: _____

Date Signed: _____

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

TOWN OF SOUTHERN SHORES

FED TAX ID NO: _____ Finance Officer: _____

REMITTANCE ADDRESS: _____ Print Name: _____

_____ Date Signed: _____

DEPARTMENT OF TRANSPORTATION (DocuSign)

BY: _____

TITLE: _____

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (DATE)



Agenda Item Summary Sheet

Date: 11/12/24

Item #: 7

Item Title: Voluntary Shared Leave Policy

Item Summary:

The purpose of voluntary shared leave is to provide economic relief for employees who are likely to suffer financial hardship because of a prolonged absence or frequent short-term absences caused by a serious medical condition. A serious medical condition is defined by FMLA standards as an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical care facility, or that involves continuing treatment by a health care provider.

Employees that experience prolonged medical conditions may exhaust all available leave and be placed on leave without pay. This will result in the employee going without pay during a critical point in their life. Under these circumstances, fellow employees may wish to voluntarily donate some of their vacation or sick leave in order help a fellow Employee.

Staff Recommendation and Requested Action: Approval of attached personnel policy

Attachments: draft Voluntary Shared Leave Policy



Town of Southern Shores

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

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

info@southernshores-nc.gov

www.southernshores-nc.gov

Voluntary Shared Leave Policy

1. Purpose

The purpose of voluntary shared leave is to provide economic relief for employees who are likely to suffer financial hardship because of a prolonged absence or frequent short-term absences caused by a serious medical condition. A serious medical condition is defined by FMLA standards as an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical care facility, or that involves continuing treatment by a health care provider.

2. Eligibility

Only permanent employees who have exhausted all accumulated paid leave (sick leave and annual leave, if applicable) and compensatory time are eligible to receive donated leave. The employee must have been employed by the Town of Southern Shores for at least 12 consecutive months before they may receive any shared leave. The employee must need and request a minimum of 80 hours of voluntary shared leave hours.

The Town Manager shall approve or deny all requests for receipt of donated leave.

3. Application for Voluntary Shared Leave

An employee who, due to their own serious medical condition or one of his/her immediate family, faces prolonged or frequent absences from work may apply to their Department Head for donated leave. Application may also be made by a third person acting on the employees' behalf if the employee is unable to make application. The application will be reviewed by the Department Head who shall then forward the application along with a recommendation to approve or deny the request to the Town Manager. The Town Manager will then decide whether to approve or deny the application. If approved, then the application will be forwarded to the Human Resources Office for processing.

Immediate family as defined for receipt for Voluntary Shared Leave includes only the employee's

1. Spouse
2. Children
3. Parents
4. Dependents living in the employee's household. Also included are the step relationships for children and parents.

An employee may make application for shared leave at such time as medical evidence is available to support the need for leave beyond the employee's available accumulated leave.

The following items must be included in the application:

1. A doctor's statement certifying the serious medical condition and the need for prolonged or frequent absence from work due to said condition;
2. The expected duration of the need for leave;
3. An authorization for release of medical information signed by the person who is suffering the medical condition (or parent or guardian of a minor). (This release may also be signed by any legally authorized party.); and
4. Sufficient information to demonstrate that the requested leave satisfies all other requirements of this Shared Leave Policy.

The fact that the applicant has a need for voluntary shared leave hours will be made known through system-wide communications by the Human Resources Director. Only general information will be supplied about the applicant's condition. A Leave Donation Form must be submitted to Human Resources by each employee desiring to donate leave in order to enter the donor's information into the shared leave tracking system. Then, the leave balance of the donating employee and the recipient will be adjusted. Donated leave is taxable to the recipient. The dollar amount of any donated leave will be included on the recipient's W-2 as income.

4. Donation of Leave

(a) To be eligible to donate vacation leave, the employee who donates leave must have more than ten (10) days of accrued leave. In no event shall a leave transfer result in the donor employee reducing his/her vacation leave balance to less than ten (10) days.

(b) To be eligible to donate sick leave, the employee who donates leave must have more than thirty (30) days of accrued leave. In no event shall a leave transfer result in the donor employee reducing his/her sick leave balance to less than thirty (30) days.

(c) To be eligible to donate any form of leave, the donating employee must have been employed by the Town of Southern Shores for at least one year before the donation.

(d) All leave donations must be to a designated employee approved by the Town Manager for receipt of donated leave and may not be made to a pool or bank.

- (e) All donations must be in writing and must be signed by the donating employee. The employee receiving the leave must be named and the amount of leave donated must be specified.
- (f) For the purposes of Voluntary Shared Leave, all leave donated will be credited to the recipient's sick leave account.
- (g) Transfer of leave will be in increments of one day of leave.
- (h) All donations of leave are strictly voluntary. The donating employee may not receive compensation in any form for the donating of leave. Acceptance of remuneration for donated leave will result in dismissal. Solicitation is not permitted.
- (i) Leave sharing shall only be considered for extreme hardship or catastrophic situations.
- (j) An employee may not file a grievance or an employee appeal if their request to receive leave or donate leave is denied. The Town Manager will render a final decision based upon the merits and circumstances of each request.
- (k) The employee receiving donated time will be given information on the amount of time donated, but will not receive information such as the names of donating employees. Leave time will be donated to the employee anonymously.
- (l) The employee donating leave must be in a leave earning position.
- (m) No one may directly or indirectly make any attempt to intimidate, threaten, or coerce any other employee for the purpose of soliciting leave. Such action will be considered a personal conduct issue and subject the employee to disciplinary action, up to and including dismissal.

5. Length of Leave

The maximum amount of Voluntary Shared Leave hours that a person could receive is 450 hours per 12-month period.

6. Earning Leave While Using Voluntary Shared Leave

Holidays occurring while the employee is using donated leave will be paid. Annual and sick leave will continue to be earned by the employee when he or she is using donated leave. Available earned leave accrued during this period must be used by the employee prior to continued use of any voluntary shared leave.

7. Unused Leave

In the event that the beneficiary should die or is separated from employment prior to exhausting all of the donated leave, the unused balance of the leave will be returned to qualifying employee donor(s). In the event that more leave is donated than is used, the balance will be returned to qualifying employee donor(s).

Qualifying employee donor(s) for return of unused shared leave will be determined by matching the total used shared leave hours with the chronological point in the shared leave tracking system where the same amount of hours is

located. Employee donors that fall within the total used shared leave hours will be disqualified from receiving returned unused shared leave. Only those employee donors whose donated leave hours have not been used as documented in the shared leave tracking system will be eligible to receive returned unused shared leave to their leave accounts from which the leave was taken.

8. Return to Work

1. An employee should notify the supervisor immediately in writing if he/she will not be returning from leave as planned.
2. During the period of leave, an employee who is out on approved shared leave is expected to report to their supervisor every pay period to ensure proper completion of timesheets.
3. Failure to report back to work at the end of the scheduled leave may be considered a voluntary resignation. If deemed necessary, the Department Head, Town Manager or designee, may revoke continuation of any previously approved shared leave.
4. A Medical Leave – Return to Work Form must be submitted to the supervisor when the employee returns to work to certify the employee is able to return to work and perform the essential functions of the position.
5. If a shared leave recipient leaves employment, shared leave ends as of the separation date.

Adopted: November 12, 2024





Agenda Item Summary Sheet

Date: 11/12/24

Item #: 8

Item Title: Floating Holiday Policy

Item Summary: A floating holiday is a flexible day off work that can be taken when an employee chooses, typically in place of a traditional fixed holiday. Floating holidays are not tied to a specific date or event and can "float" to the date selected by the employee each year. Paid holidays are set days off recognized by the Town, allowing all employees to observe significant events together, like New Year's Day, Christmas and Thanksgiving. Floating holidays, in contrast, offer employees the flexibility to choose days off that align with their personal or cultural significance. Not all employees observe the same holidays. Floating holidays recognize this diversity and provide opportunities to celebrate cultural or religious events that are meaningful to each employee. Flexible paid leave policies in general can help employees feel more appreciated, engaged and satisfied in their jobs and contribute to an overall positive and dynamic workplace culture. Floating holidays demonstrate an organization's commitment to fostering a flexible, inclusive, and engaging workplace environment. These policies allow companies to cater to the diverse needs of their workforce, acknowledging that employees' personal lives are varied and important.

Staff Recommendation and Requested Action: Staff recommends and requests Town Council approval of the attached Floating Holiday Policy.

Attachments: Draft Floating Holiday Policy



Town of Southern Shores

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

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

info@southernshores-nc.gov

www.southernshores-nc.gov

Floating Holiday Policy

All regular full-time employees are eligible for time off with pay for one (1) floating holiday per calendar year. This floating holiday is in addition to the Town's regular paid holidays. The floating holiday may be used for religious or cultural holidays, employee's birthday or work anniversary, or other days in which the Town is open. The floating holiday must be approved in advance by the Department Head. The employee MUST be in a pay status (cannot be on any form of leave without pay) and must be taken on a regular scheduled workday and recorded on their timesheet as FH (floating holiday). A floating holiday is not compensable upon termination and cannot be transferred, banked or carried over to another calendar year. The floating holiday cannot be divided into hourly increments or half days and must be used in full on the day approved. The floating holiday will be forfeited if it is not used within the calendar year and in accordance with these guidelines.



Agenda Item Summary Sheet

Date: 11/12/24

Item #: 9

Item Title: Cemetery Improvement Updates and Consideration of Amendments to Town Code Sec. 10-1. Municipal cemetery established; cemetery fund; monitoring of operations.

Item Summary: In addition to providing the status of improvements and updates to the Town Cemetery, town staff requests the Town Council to consider certain amendments to Town Code Sec. 10-1.

Among other edits, the amendments would remove certain requirements regarding certificate renewals, and add requirements for marker placement and notification to the Town.

Staff Recommendation and Requested Action: Staff recommends and requests Town Council approval of TCA-24-03.

Attachments: TCA-24-03



Town of Southern Shores
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TCA-24-03
11-6-24
Ordinance 2024-11-01

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

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-174, the Town of Southern Shores (the “Town”) may also enact and amend ordinances that define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the Town; and

WHEREAS, the Town finds that the Town of Southern Shores has authority to establish, operate, and maintain cemeteries pursuant to North Carolina General Statute 160A-341; and

WHEREAS, the Town further finds that the Town of Southern Shores has authority to adopt by ordinance rules and regulations concerning all matters of the use, operation, and maintenance of Town cemeteries, and may impose a schedule of prices for lots; and

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

ARTICLE II. Construction.

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

ARTICLE III. Amendment of Town Code.

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

1 **PART I.** That **Sec. 10-1. Municipal cemetery established; cemetery fund;**
2 **monitoring of operations.** Be amended as follows:

3
4 **Sec. 10-1. Municipal cemetery established; cemetery fund; monitoring of operations.**
5

6 (a) The town shall establish, operate and maintain a municipal cemetery on that parcel
7 of land, the gift of the Southern Shores Civic Association, bounded on the north by
8 Kitty Hawk Land Company Lot No. 8, Block 202, on the west by Dogwood Trail
9 and on the south and east by the property of the Outer Banks Recreation
10 Association.

11 (b) The cemetery shall be known as the Southern Shores Cemetery.

12 (c) The cemetery development, operation and maintenance costs shall be paid for from
13 revenues derived from the sale of lots in the cemetery. A cemetery fund shall be
14 established in the town budget to account for revenues and expenditures.

15 (d) The mayor, with the approval of the town council, may appoint a councilmember to
16 monitor cemetery operations and policies established by the town council and make
17 recommendations to the council as appropriate.

18 (e) The council may establish further regulations regarding the management or
19 maintenance of the cemetery.

20 (1) A certificate of burial rights shall be issued for the right to use, for burial
21 purposes and in exchange for payment, lot or lots in Southern Shores Cemetery
22 and is issued subject to the rules, regulations and ordinances governing the
23 cemetery adopted by the town council. ~~The right conveyed by a certificate is~~
24 ~~for a period of 20 years from the date of execution of the certificate by the town~~
25 ~~and thereupon shall expire. Once a lot is used for a family member, however,~~
26 ~~the entitlement to use one other lot owned by that family vests in perpetuity to~~
27 ~~the family without renewal requirements. Any remaining lots may be retained~~
28 ~~by the family as long as renewal requirements are met.~~ The right to use the
29 ~~above described~~ cemetery lot as burial place is vested to the grantee and any
30 member of his/her immediate family which is defined as spouse, brother, sister,
31 parent, child or grandchild or the spouse of any of those and shall not be
32 assigned to any other person.

33 (2) ~~Should no immediate family burial occur within 20 years from the date of the~~
34 ~~certificate expiration, then, upon tender of a renewal fee of \$10.00 within five~~
35 ~~years following the expiration date of the original certificate, the certificate may~~
36 ~~be renewed for a period of ten years from the expiration date of the original~~
37 ~~certificate. It is the responsibility of the grantee or his family, to advise the~~
38 ~~town of any change of address and renew the certificate. Automatic~~
39 ~~cancellation of burial rights will occur if the certificate is not duly renewed~~
40 ~~within five years following the expiration date of the original certificate.~~ No
41 more than four lots may be owned by any one family, unless town council
42 determines otherwise, based on number of children, grandparents, spouses.
43 Upon written request of the certificate holder, the town may purchase lots back

1 at the original purchase price. ~~Current purchase price is \$500.00 for town~~
 2 ~~property owners, \$2,000.00 for non-property owners.~~

3 ~~(3) Lots containing trees shall only be used for burial of cremains.~~

4 (43) The town clerk shall be notified, in writing, by a deceased's representative of
 5 any marker placement, interment or dis-interment in or from a cemetery lot
 6 prior to such action.

7 (54) The town reserves the right to determine, establish, modify, alter or change the
 8 grade of any vacant lot, road, driveway, pathway or part thereof, and it shall not
 9 be liable to anyone for any such action.

10 (65) No lot owner shall make any changes or alterations in or on any lot, including
 11 the removal or change in position of any memorial or marker, removal of trees
 12 or shrubs without the written consent of the town manager.

13 a. No coping, curbing, fencing, hedging, borders, perennial plantings, shrubs,
 14 corner posts, or enclosure of any kind will be allowed around a gravesite.
 15 No walks of brick, cinders, tile, stone, sand, cement, gravel or wood or
 16 other materials will be allowed on any cemetery lot.

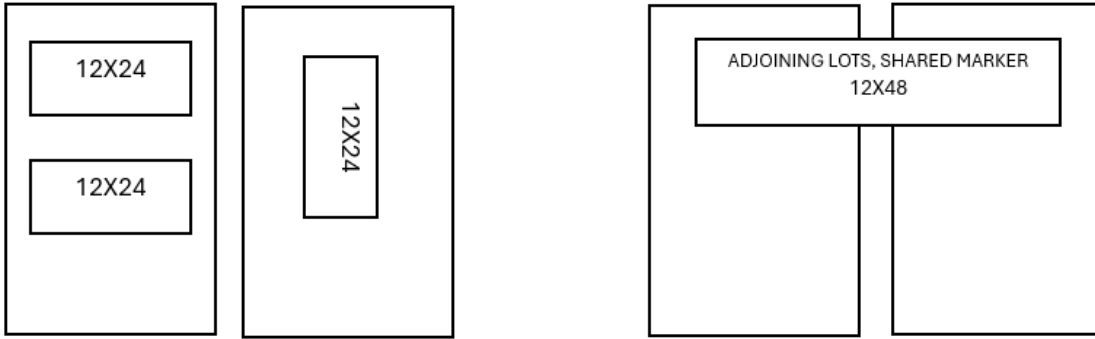
17 b. No ~~trinkets~~ personal items such as toys, shells, glass jars, tin cans, sand,
 18 flagpoles, lights or any article ~~determined to be unsightly by the town~~
 19 ~~manager~~ other than wreaths or flowers shall be allowed on a grave. Any
 20 such articles may be removed without notice and the town will not be
 21 responsible for the loss or destruction of the same.

22 (76) Besides being subject to these rules and regulations, all interments, dis-
 23 interments and removals are made subject to the orders and laws of the properly
 24 constituted authorities of the county and state.

25 (87) Grave markers shall not be in excess of 12 by 24 inches in size and shall be
 26 made of permanent material. Adjoining family graves may share a common
 27 marker whose size shall not exceed 12 by 48 inches and shall be made of
 28 permanent material and centered between the two adjoining lots.

29 a. Markers shall be located at the head of the grave, center measured one-
 30 foot from each side, readable west to east with long dimension of the
 31 marker to be on a North/South axes only. Additional 12 by 24-inch
 32 markers, shall be placed parallel to the 24-inch dimension of the head
 33 marker; (See diagram)

PERMITTED MARKER PLACEMENTS



1

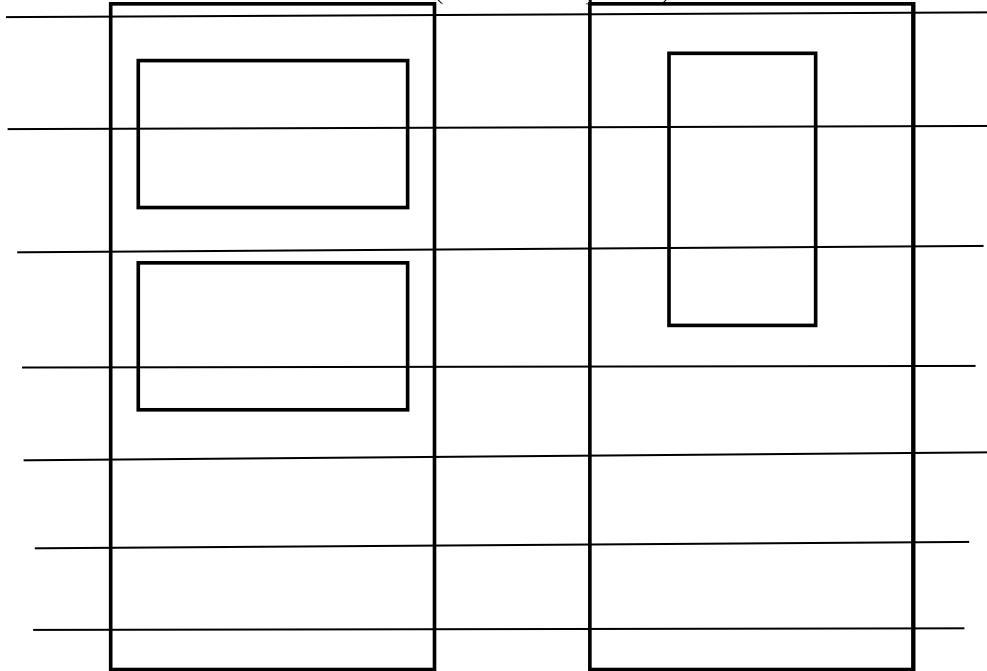
CORRECT

INCORRECT

2

PERMITTED MARKER PLACEMENT:

(see description)



Right

Wrong

3

4

5

b. The top of a marker shall be flush and flat with the ground.

6

c. Grave markers with porcelain or photographs are not permitted.

7

8

(10) Markers shall be located at the head of the grave, center measured one-foot from each side, readable west to east with long dimension of the marker to be

9

1 on a North/South axis only. Additional 12 by 24 inch markers, shall be placed
2 parallel to the 24 inch dimension of the head marker; (See diagram)

3 ~~(11) The top of a marker shall be flush and flat with the ground.~~

4 ~~(12) Grave markers with porcelain or photographs are not permitted.~~

5 ~~(13)~~ No loitering shall be allowed in the cemetery.

6

7 **ARTICLE IV. Severability.**

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

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15 **ARTICLE V. Effective Date.**

16 This ordinance amendment shall be in full force and effect from and after the 12th day of
17 November, 2024.

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Elizabeth Morey, Mayor

21 ATTEST:

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Town Clerk

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APPROVED AS TO FORM:

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Town Attorney

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Date adopted:

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Motion to adopt by Councilmember:

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Motion seconded by Councilmember:

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Vote: ___AYES___NAYS



Agenda Item Summary Sheet

Date: 11/12/24

Item #: 10

Item Title: Tourism Board Appointment

Item Summary: DARE COUNTY TOURISM BOARD (Two Year Term)

The Tourism Board promotes travel to and tourism in Dare County and it's municipalities. Their objective is to promote and encourage tourism in Dare County with the aim of increasing visitation and revenue.

Mark Batenic's term on the Tourism Board expires in December and he is eligible for reappointment. If he does not seek reappointment, another member would need to be nominated and submit an application:

https://lfp.darecountync.gov/Forms/board_application

From: Skyler Foley <skyler.foley@darenc.gov>
Sent: Tuesday, October 8, 2024 3:42 PM
To: Sheila Kane <skane@southernshores-nc.gov>
Subject: Mark Batenic - Tourism Board

Good afternoon,

Here I am again with another Tourism Board email.

Mark Batenic's term on the Tourism Board expires in December and he is eligible for reappointment.

Please provide me with your Board's recommendation by November 25th, 2024. If they recommended individuals other than Mr. Batenic please have those individuals fill out this application: https://lfp.darecountync.gov/Forms/board_application

Thank you,

--

Skyler Foley
Clerk to the Board of Commissioners
Assistant to the County Manager
P.O. Box 1000, Manteo, NC 27954
252.475.5700 phone
www.darenc.gov