

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

All in accordance with the following terms and conditions.

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

Proposal: Town of Southern Shores, North Carolina: 2023 Annual Monitoring Services

2. **FEES, INVOICES AND PAYMENTS:** The Services associated with Tasks 1 – 2 will be performed for the lump sum fee of **\$33,471.25 (Thirty-three thousand, four hundred seventy-one dollars and twenty-five cents).**

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

3. **CLIENTS COOPERATION:** To assist CPE in performing the Services, CLIENT shall (i) provide CPE with relevant material, data, and information in its possession pertaining to the specific project or activity, (ii) consult with CPE when requested, (iii) permit CPE reasonable access to relevant

project sites, (iv) ensure reasonable cooperation of CLIENT's employees in CPE’s activities, and (v) notify and report to all regulatory agencies as required by such agencies.

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

Nothing herein is meant to prevent nor shall be interpreted as preventing either party from disclosing and/or using any information or data (i) when the information or data are actually known to the receiving party before being obtained or derived from the transmitting party, (ii) when information or data are generally available to the public without the receiving party's fault at any time before or after it is acquired from the transmitting party; (iii) where the information or data are obtained or acquired in good faith at any time by the receiving party from a third party who has the same in good faith and who is not under any obligation to the transmitting party in respect thereto; (iv) where a written release is obtained by the receiving party from the transmitting party; (v) three (3) years from the date of receipt of such information; or (vi) when required by process of law; or by North Carolina Public Records Law; provided, however, upon service of such process, the recipient thereof shall use reasonable efforts to notify the other party and afford it an opportunity to resist such process.

5. **DELAYS AND CHANGES IN CONDITIONS:**

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

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

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

extent arising from the negligent acts or omissions or willful misconduct of CLIENT, its officers and employees.

8. **LIMITATIONS OF LIABILITY:**

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

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

9. **GOVERNING LAWS:** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.

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

Further, to the extent permitted by law, any provision found invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable

consistent with the parties' intent. The terms and conditions set forth herein shall survive the termination of this Agreement.

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

Executed on _____, 2023

COASTAL PROTECTION ENGINEERING OF NORTH CAROLINA, INC.

TOWN OF SOUTHERN SHORES, NORTH CAROLINA

By (Sign): _____

By (Sign): _____

Print Name: Kenneth Willson

Print Name: _____

Title: President

Title: _____

Address: 4038 Masonboro Loop Road,

Address: _____

Wilmington, North Carolina, 28409

Phone: (910) 399-1905

Phone: _____

Fax: N/A

Fax: _____

E-mail: kwillson@coastalprotectioneng.com

E-mail: _____

EXHIBIT “A”
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2023 ANNUAL MONITORING SERVICES

Coastal Protection Engineering of North Carolina, Inc. (hereinafter “CPE”) proposes to provide professional services to the Town of Southern Shores (hereinafter the “TOWN”), associated with annual monitoring of the TOWN’s Beach Nourishment Project constructed in 2022 and 2023. CPE will sub-contract portions of the data acquisition included in Tasks 1 as described in the respective sections of this scope of work.

This proposal includes 2023 annual monitoring data acquisition, analysis, and updating the TOWN’s Beach Maintenance Plan. Each task is described in detail in the following sections.

TASK 1 – 2023 ANNUAL BEACH PROFILE DATA ACQUISITION

The standard method used to monitor beach nourishment projects is to collect topographic and bathymetric data along a series of beach profiles on an annual or bi-annual basis. Comparison of this data can be used to track volumetric changes of sand along the beach and changes in the shoreline position. Furthermore, in order to be eligible for disaster assistance through the Federal Emergency Management Agency (FEMA), local sponsors of beach nourishment projects are encouraged to monitor the beach annually to document conditions of the project prior to the impact of a storm.

The 2023 beach profile surveys will be conducted along the TOWN to evaluate volume and shoreline change trends as well as performance of the TOWN’s beach constructed in 2022/2023. The 2023 beach profile data acquisition will be conducted prior to June 30, 2023. Topographic data will be collected along each beach profile to include the dune, berm, and foreshore section of the beach, while bathymetric data will be collected along the offshore portion of the profile. Beach profile data acquisition will be conducted along twenty-two (22) profiles spaced approximately 1,000 feet apart. These twenty-two (22) profiles are from approximately baseline station -10+00 (located near Sea Bass Circle) to baseline station 197+12 (near 11th Avenue), and include intermediate profile at Station -153+05. Data for the beach profile located at the border of Southern Shores and Kitty Hawk (baseline station 0+00) will be collected by CPE under a separate contract with the Town of Kitty Hawk. CPE will sub-contract portions of this work to McKim & Creed.

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

Beach profiles will extend landward from their respective baseline station until a structure is encountered or a range of 25 feet beyond the dune is reached, whichever is seaward. Elevation

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measurements will also be taken seaward along the profile to a range of 3,000 feet beyond the shoreline or to the -30 NAVD88 contour, whichever is more landward.

Land-based or "upland" data collection will include all grade breaks and changes in topography to provide a representative description of the conditions at the time of the work. The maximum spacing between data points along individual profiles will be 25 feet. The upland work will extend into wading/swimming depths sufficiently to provide a minimum 50-foot overlap with the offshore data. This overlap between the topographic and bathymetric data acquisition provides quality control and quality assurance.

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

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

As an appendix to the 2023 Post-Construction Monitoring Report described under Task 2, CPE will provide the TOWN with a survey report as an appendix. This appendix will include methodology, field notes for the data acquisition, control information, profile plots, cross sections, and digital XYZ data.

TASK 2 – ANNUAL 2023 BEACH PROFILE DATA ANALYSIS AND REPORT

CPE will conduct both shoreline and volume change analysis to evaluate volumetric and shoreline trends along the Town's oceanfront. Furthermore, the data collected will be used to evaluate project performance of the 2022/2023 project. Analysis will focus on the total shoreline and volume change that has occurred since the project was constructed in 2022 and 2023.

Given the contiguous nature of the beach nourishment project constructed from the north end of Southern Shores to approximately Prospect Avenue in Kill Devil Hills, CPE will prepare a comprehensive shoreline and volume change monitoring report that includes the Towns of Southern Shores, Kitty Hawk, and Kill Devil Hills. The report will include details of data collection and methods used as well as results of the various analyses. The results will be

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reported in terms of the project area in total and broken up into Town-specific sections. The report will also include a discussion section and recommendations based on the report findings. Deliverables will include two (2) hardcopies of the report with CD or USB drive which will include digital versions of the report, appendices, and data. In addition to the report, one (1) in-person meeting is included to present the findings of the monitoring report to the TOWN.

Costs associated with the 2023 monitoring report will be costs shared with the Towns of Kitty Hawk and Kill Devil Hills. This not only provides each Town with a broader view of how their Town's project fits into the overall project length, but it also provides cost efficiencies by reducing redundancy. Additional costs will be required if the Town prefers to have a separate report prepared that only includes their Town's portion of the project.

CPE will also update the TOWN's Beach Maintenance Plan as needed. The update will include any necessary updates to the project description, description of planning efforts, and monitoring methods or events to document compliance with FEMA guidance for disaster assistance. The Beach Maintenance Plan will be developed in a way consistent with the Public Assistance Program and Policy Guide –FP-104-009-2 (June 2020). Specifically, the costs and volume of fill placement will be updated along with re-nourishment requirements. CPE will coordinate with TOWN staff to identify current and future funding sources and document these in the maintenance plan. The future cost will be estimated on a 5-year horizon and will be categorized as Planning & Design, Construction, or Monitoring efforts. This task assumes there are no 'new' project initiatives for the TOWN project and assumes the existing maintenance plan is only being updated.

**EXHIBIT B:
BREAKDOWN OF COSTS
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2023 ANNUAL MONITORING SERVICES**

Table 1. Breakdown of the total cost of the 2023 Monitoring Services associated with the Town of Southern Shores (Tasks 1 – 2).

TASK	DESCRIPTION	COST
1	2023 Annual Beach Profile Data Acquisition	\$18,904.75
2	2023 Annual Monitoring Report	\$14,566.50
	TOTAL:	\$33,471.25

**EXHIBIT C:
LIST OF DELIVERABLES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
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The following items have been identified by Coastal Protection Engineering of North Carolina, Inc. (hereinafter "CPE") as deliverables to the Town of Southern Shores (hereinafter "TOWN") for the completion of this scope of work.

- Monthly Progress Reports
- Annual Beach Monitoring Report
- Beach Profile Data Appendix
- Beach Maintenance Plan Update

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

Monthly Progress Reports: CPE will provide a one (1) page summary of the project status via e-mail approximately every 30 days during the anticipated 8-month contract period. The letter will describe activities completed throughout the month and update the anticipated schedule of milestones as appropriate.

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

Beach Profile Data Appendix: Upon completion of the beach profile data acquisition described under Task 1, CPE will provide a record of the methodology used to acquire the data as well as data acquisition notes, control information, profile plots, cross sections, and digital XYZ data. Barring any unforeseen circumstances, a draft of this appendix will be available within 60 days following completion of data acquisition operations. The final appendix will be provided in both hard copy and digital copy along with the Beach Monitoring Report.

Beach Maintenance Plan Update: Along with the Beach Monitoring Report, an updated Beach Maintenance Plan will be provided to the TOWN. The update will include project and planning

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features to document compliance with FEMA guidance for disaster assistance. Barring any unforeseen circumstances, the draft update will be provided within 120 days following completion of survey operations. Once comments are received from the TOWN on the Draft update, a final update will be provided. Two (2) hardcopies and two (2) digital copies will be provided.