



County of Dare

P.O. Box 1000 | Manteo, NC 27954

DARE COUNTY BOARD OF COMMISSIONERS

Dare County Administration Building
954 Marshall C. Collins Dr., Manteo, NC

Monday, June 17, 2019

“HOW WILL THESE DECISIONS IMPACT OUR CHILDREN AND FAMILIES?”

AGENDA

- 5:00 PM** **CONVENE, PRAYER, PLEDGE OF ALLEGIANCE**
- ITEM 1** Opening Remarks - Chairman's Update
- ITEM 2** Public Comments
- ITEM 3** 2020 Census Complete Count Committee
- ITEM 4** 2019 Federal BUILD Grant Application for Hatteras Pathways
- ITEM 5** Timothy Jennette Request to Fill Ditch
- ITEM 6** Architect Selection and Contract for Design of DHHS Building Project
- ITEM 7** Architect Recommendations by the Capital Improvements Planning Committee
- ITEM 8** APTIM Agreement - Shallowbag Bay Project
- ITEM 9** Consent Agenda
- 1. Approval of Minutes (06.03.19)
 - 2. Public Works/Budget Amendment for Sale of Surplus Equipment
 - 3. Public Health Division - Veterans' Care Agreement
 - 4. Tax Collector's Report
- ITEM 10** Board Appointments
- 1. Oregon Inlet Task Force
- ITEM 11** Commissioners' Business & Manager's/Attorney's Business

ADJOURN UNTIL 5:00 P.M. ON July 15, 2019



Opening Remarks - Chairman's Update

Description

Dare County Chairman Robert Woodard will make opening remarks.

Board Action Requested

Informational Presentation

Item Presenter

Chairman Robert Woodard



Public Comments

Description

The Board of Commissioners encourages citizen participation and provides time on the agenda at every regularly scheduled meeting for Public Comments. This is an opportunity opportunity for anyone to speak directly to the entire Board of Commissioners for up to five minutes on any topic or item of concern.

Comments can be made at the Commissioners Meeting Room in Manteo or through an interactive video link at the Fessenden Center Annex in Buxton.

Commissioners Meeting Room - Administration Building, 954 Marshall Collins Drive, Manteo
Video Link - Fessenden Center Annex, 47017 Buxton Back Road, Buxton

Board Action Requested

Hear Public Comments

Item Presenter

Robert Outten, County Manager



2020 Census Complete Count Committee

Description

On May 23, Dorothy Hester and I attended a 2020 census complete count organizational meeting sponsored by the Albemarle Commission. Census workers presented information on the upcoming 2020 census. Each county in North Carolina is being asked to establish a complete count committee to assist with outreach activities promoting participation in the 2020 census. Should it be the pleasure of the Board to establish a complete count committee for Dare County, then a list of organizations for participation on the committee is attached that Dorothy and I put together. Ideally, the committee should be in place before the census count in April 2020. This will allow outreach activities to be planned and materials distributed. A chairperson of the committee also needs to be should be appointed. Dorothy and I are willing to serve as co-chairs if needed.

Board Action Requested

Authorization to prepare a letter for Chairman Woodard's signature to the identified organizations soliciting their participation in Complete Count Committee.

Item Presenter

Donna Creef and Dorothy Hester

2020 CENSUS COMPLETE COUNT
SUGGESTED STAKEHOLDERS ORGANIZATIONS

Local municipalities

Dare County Health and Human Services

Room at the Inn—Interfaith Outreach Agency

Outer Banks Chamber

Dare County Board of Education

Dare County libraries

Dare Ministerial Association

Dare County Older Adult Services takeholders

2020 Census Timeline

Contact Information

For additional information about the Complete Count Committees program, please contact your regional census office.

Complete Count Committees

2018

- Tribal leader, governor, or highest elected local official or community leader determines Complete Count Committees (CCCs) structure.
- CCCs receive 2020 Census training.

2019

- Continue establishing CCCs.
- Open Area Census Offices.
- CCCs develop strategy and work plan.

2020

- CCCs begin community organization mobilization.
- 2020 Census advertising campaign begins in early 2020.
- CCCs support the 2020 Census.
- CCCs encourage self-response.

April 1, 2020 - CENSUS DAY

- CCCs urge households who do not respond to cooperate with census takers.

Please contact:

If you reside in:

ATLANTA
Atlanta.rcc
.partnership
@2020census.gov

Alabama, Florida,
Georgia, Louisiana,
Mississippi,
North Carolina,
and South Carolina

CHICAGO
Chicago.rcc
.partnership
@2020census.gov

Arkansas, Illinois,
Indiana, Iowa,
Michigan, Minnesota,
Missouri, and
Wisconsin

DALLAS
Dallas.rcc
.partnership
@2020census.gov

Arizona, Colorado,
Kansas, Montana,
Nebraska, New
Mexico, North
Dakota, South
Dakota, Oklahoma, Texas,
Utah, and Wyoming

LOS ANGELES
Los.Angeles.rcc
.partnership
@2020census.gov

Alaska, California,
Hawaii, Idaho,
Nevada, Oregon,
and Washington

NEW YORK
New.York.rcc
.partnership
@2020census.gov

Connecticut, Maine,
Massachusetts, New
Hampshire, New Jersey,
New York, Rhode Island,
Vermont, and Puerto Rico

PHILADELPHIA
Philadelphia.rcc
.partnership
@2020census.gov

Delaware, District of
Columbia, Kentucky,
Maryland, Ohio,
Pennsylvania, Tennessee,
Virginia, and West Virginia



The 2020 Census is almost here!

The 2020 Census provides an opportunity for everyone to be counted. Tribal, state, and local governments; community-based organizations; faith-based groups; schools; businesses; the media; and others play a key role in developing partners to educate and motivate residents to participate in the 2020 Census.

When community members are informed, they are more likely to respond to the census. Through collaborative partnerships, the U.S. Census Bureau and community leaders can reach the shared goal of counting EVERYONE in 2020.

The Complete Count Committees (CCC) program is key to creating awareness in communities all across the country.

- CCCs utilize local knowledge, influence, and resources to educate communities and promote the census through locally based, targeted outreach efforts.
- CCCs provide a vehicle for coordinating and nurturing cooperative efforts between tribal, state, and local governments; communities; and the Census Bureau.
- CCCs help the Census Bureau get a complete count in 2020 through partnerships with local governments and community organizations.

Get Started

WHO?

Tribal, state, and local governments work together with partners to form CCCs to promote and encourage response to the 2020 Census in their communities. Community-based organizations also establish CCCs that reach out to their constituents.

WHAT?

A CCC is comprised of a broad spectrum of government and community leaders from education, business, healthcare, and other community organizations. These trusted voices develop and implement a 2020 Census awareness campaign based upon their knowledge of the local community to encourage a response.

WHEN?

The formation of CCCs is happening NOW! Leaders are identifying budget resources and establishing local work plans. In 2020, they will implement the plans and lead their communities to a successful census count.

WHY?

The primary goal of the 2020 Census is to count everyone once, only once, and in the right place.

Community influencers create localized messaging that resonates with the population in their area. They are trusted voices and are best suited to mobilize community resources in an efficient manner.

HOW?

It's up to all of us! CCCs know the best way to reach the community and raise awareness. Some activities could include:

- Holding CCC kickoff meetings with media briefings.
- Participating in Census rallies or parades.
- Coordinating Census unity youth forums.
- Hosting Interfaith breakfasts and weekend events.
- Encouraging the use of Statistics in Schools classroom resources.
- Incorporating census information in newsletters, social media posts, podcasts, mailings, and websites.
- Helping recruit census workers when jobs become available.

2020 CENSUS KEY DATES

COMMUNITY INVOLVEMENT – OFFICES – DATA COLLECTION OPERATIONS

January 2018 through December 2019

Engage & Educate Local Leaders, Partners & Communities

January 2019

Early Area Census Offices Open (these offices run the Address Canvass Operation)

June 2019

Additional Area Census Offices Open (ACOs)

August 2019 through October 2019

Address Canvassing Operation

March 2020

Call to Action for Residents to Respond (starting March 23rd)

February 2020 through June 2020

Group Quarters Operations (Count of Residents in Shelters, Dorms, Nursing Homes, Transitory Locations, Prisons, Military Bases, RV Parks, etc. Local governments & Census identify & plan these operations)

Mid-March 2020

Residents Invited to Respond

Individual Housing Units (HUs) Invited by either:

Mail (to USPS Mailable Addresses) or

1. Letter Mailed
2. Reminder Postcard
3. Then Paper Questionnaire

Hand Delivery (to Rural/PO Box, non-USPS HU delivery)

1. List Housing Units (operation is called Update Leave)
2. Leave Questionnaire (Spanish in certain areas) & Letter w/other Response Options (internet & Phone

Options to Self-Respond (all residents will have these 3 options & decide what is best for them)

Internet

Telephone

Paper

March 23, 2020

Self-Response Begins

April 1, 2020

Census Day – Reference Date = where you live on April 1

April 2020

Early Non-Response Follow-up begins (primarily areas around Colleges/Universities where the population leaves before early May)

May 2020

Non-Response Follow-up (NRFU) begins for households that do not self-respond (Households can continue to self-respond during this time)

Late August 2020 through September 2020

Areas Census Offices Begin Closing

August 2020 through December 2020

Quality Evaluation (re-contact of select Housing Units)

December 31, 2020

Deliver Counts to the President



50 Ways Census Data Are Used

- Decision making at all levels of government.
- Drawing federal, state, and local legislative districts.
- Attracting new businesses to state and local areas.
- Distributing billions in federal funds and even more in state funds.
- Forecasting future transportation needs for all segments of the population.
- Planning for hospitals, nursing homes, clinics, and the location of other health services.
- Forecasting future housing needs for all segments of the population.
- Directing funds for services for people in poverty.
- Designing public safety strategies.
- Development of rural areas.
- Analyzing local trends.
- Estimating the number of people displaced by natural disasters.
- Developing assistance programs for American Indians and Alaska Natives.
- Creating maps to speed emergency services to households in need of assistance.
- Delivering goods and services to local markets.
- Designing facilities for people with disabilities, the elderly, or children.
- Planning future government services.
- Planning investments and evaluating financial risk.
- Publishing economic and statistical reports about the United States and its people.
- Facilitating scientific research.
- Developing “intelligent” maps for government and business.
- Providing proof of age, relationship, or residence certificates provided by the Census Bureau.
- Distributing medical research.
- Reapportioning seats in the House of Representatives.
- Planning and researching for media as backup for news stories.
- Providing evidence in litigation involving land use, voting rights, and equal opportunity.
- Drawing school district boundaries.
- Planning budgets for government at all levels.
- Spotting trends in the economic well-being of the nation.
- Planning for public transportation services.
- Planning health and educational services for people with disabilities.
- Establishing fair market rents and enforcing fair lending practices.
- Directing services to children and adults with limited English language proficiency.
- Planning urban land use.
- Planning outreach strategies.
- Understanding labor supply.
- Assessing the potential for spread of communicable diseases.
- Analyzing military potential.
- Making business decisions.
- Understanding consumer needs.
- Planning for congregations.
- Locating factory sites and distribution centers.
- Distributing catalogs and developing direct mail pieces.
- Setting a standard for creating both public and private sector surveys.
- Evaluating programs in different geographic areas.
- Providing genealogical research.
- Planning for school projects.
- Developing adult education programs.
- Researching historical subject areas.
- Determining areas eligible for housing assistance and rehabilitation loans.



Federal BUILD Grant Program

Description

The BUILD grant program is a federal grant program for multi-modal transportation projects. Dare County has been requested by the Hatteras Civic Association to submit an application for pedestrian and bike pathways in village. We submitted an application last year but did not receive funding. Under the terms of the BUILD program, Dare County is considered a rural area and no local match is required for the grant. The minimum grant award for rural areas is \$1 million. Dare County must submit the grant application on behalf of the Hatteras Civic Association. If awarded, the funds would be used to construct paths along NC 12 and Eagle Pass Road. With the implementation of the Hatteras-Ocracoke passenger ferry, the paths would be a valuable infrastructure improvement to the village. A resolution in support of the BUILD grant application is attached for the Board's consideration.

Board Action Requested

Adopt resolution and instruct staff to submit grant application for BUILD 2019.

Item Presenter

Donna Creef

**RESOLUTION SUPPORTING THE HATTERAS VILLAGE MULTI-MODAL
BUILD GRANT REQUEST**

WHEREAS, the NC Department of Transportation has implemented a passenger ferry system originating in Hatteras village traveling to Ocracoke village thereby enhancing the ferry experience for the thousands of people that visit the Outer Banks annually by providing an alternative to the vehicle ferries that also travel this route, and

WHEREAS, infrastructure improvements in Hatteras village to supplement the passenger ferry service are needed so visitors and residents can connect to the Hatteras ferry terminal using multi-modal pathways throughout Hatteras village not roadways; and

WHEREAS, the availability of reliable and convenient modes of transportation such as bicycles for passenger ferry riders once they reach their destination of Hatteras village will ensure the success of the Hatteras-Ocracoke passenger ferry, and

WHEREAS, the use of multi-use pathways in Hatteras village will provide a safe system of multi-modal transportation in Hatteras village for those persons utilizing the passenger ferries while vacationing on the Outer Banks, and

WHEREAS, federal funding in the BUILD grant program is available for the construction of transportation infrastructure improvements especially in rural areas such as Hatteras Island, and

WHEREAS, the passenger ferry system linking Hatteras village to Ocracoke village and the use of multi-use pathways for pedestrian and bicycle riders represents a unique multi-modal transportation project, which is the objective of the BUILD program:

NOW THEREFORE BE IT RESOLVED, the Dare County Board of Commissioners respectfully submits a BUILD grant application for the construction of multi-use pathways in Hatteras village in support of the Hatteras-Ocracoke passenger ferry.

BY: _____

DATE:

Robert L. Woodard, Chairman
Dare County Board of Commissioners

ATTEST: _____

Gary Gross
Clerk to the Board



Timothy Jennette Request to Fill Ditch

Description

Last month, the Board conducted a hearing on Mr. Jennete’s request to fill a ditch on his property in Buxton. No action was taken at the request of NCDOT for additional time to comment. An email from NCDOT is attached. Chapter 51 of the Code of Ordinance states that no ditch or drainage improvement can be filled or impeded unless authorized by Dare County after a hearing on whether such action would result in possible harm to public health. Mr. Jennette has been advised to provide additional information from an engineering prospective. Written comments from adjoining property owners were received last month and there were two speakers at the hearing last month opposed to the request. Draft motions are included in a separate attachment.

Board Action Requested

Act on Jennette request to fill ditch.

Item Presenter

Donna Creef



Donna Creef <donnac@darenc.com>

FW: [External] NCDOT culvert

1 message

Ryder, Jeffrey D <jdryder@ncdot.gov>
To: Donna Creef <donnac@darenc.com>

Fri, May 31, 2019 at 9:09 AM

Donna,

The following was sent to me by the Division maintenance engineer and represents the DOT findings and decision on the pipe issue at the Jennette property in Buxton, If you further questions please let me know.

Jeff Ryder
County Maintenance Engineer
Dare OBX / Currituck OBX / Hyde Ocracoke
NCDOT Division 1
(252) 473-2990 Office
(252) 216-8477 Cell
jdryder@ncdot.gov
306 simon Street
Manteo, NC 27954-9592



*Email correspondence to and from this address is subject to the
North Carolina Public Records Law and may be disclosed to third parties.*

From: Bridgers, Clemmon W <cwbridgers@ncdot.gov>
Sent: Tuesday, May 28, 2019 11:59 AM

To: Ryder, Jeffrey D <jdryder@ncdot.gov>

Cc: Proctor, Michael <mproctor@ncdot.gov>; Jennings, Jerry D <jjennings@ncdot.gov>; Sawyer, Ronald K <rsawyer@ncdot.gov>

Subject: RE: [External] NCDOT culvert

I have looked at the contour map, aerials, etc., and discussed the same with Division Engineer Jerry Jennings. After an exhaustive review, and in consideration of the due diligence by Maintenance Forces to locate a culvert in the vicinity, the Division concludes:

- Forces have been unable to locate any culvert in the vicinity of the proposed grading operation (by Jeannette).
- Contour lines indicate this area to have significant grade to promote drainage away from the right of way of NC 12 toward the north and south (either side of the road).
- There is currently no direct outlet to the north (sound side), that would be served by a crossline.
- To the best of our knowledge, NCDOT/NC 12 has not been adversely affected by the absence of a functioning crossline in this location in the last several years

NCDOT anticipates no issue with drainage on NC 12 should the adjacent property owner perform the proposed grading and filling operation on private property. It will be necessary that the grading/filling operation not be to the extent that water is then caused to back up or stand on or immediately adjacent to the right of way of NC 12, such that it is deemed a problem by the Department. Should this be the case, the landowner will be expected to perform corrective measures to the satisfaction of NCDOT.

This review does not consider any potential ramifications on adjacent landowners, merely NCDOT facilities (NC 12 and right of way).

If you have any questions, please advise.

Clemmon W. "Win" Bridgers, Jr., PE

Division Maintenance Engineer, Division One

NC Department of Transportation

252 482-1854 office

252 209 6235 mobile

cwbridgers@ncdot.gov

113 Airport Drive

DRAFT MOTIONS

Motion to Approve Jennette Request:

“I move that Timothy Jennette be authorized to fill a ditch on parcel 016967900 in Buxton, NC. The ditch may not be filled with vegetative debris unless authorized by the State of North Carolina Division of Solid Waste. Other materials such as trash, junk, household goods or other litter may not be used to fill the ditch.”

Motion to Deny Jennette Request

“I move that Mr. Jennette’s request to fill a ditch on parcel 016967900 not be authorized. Information presented at the public hearing indicates possible harm to the public health may occur if the ditch is filled.”



BUXTON
0526 0768 6387



[Print](#)

Dare County, NC Code of Ordinances

§ 51.01 RESTRICTING DRAINAGE DITCHES.

(A) It is dangerous and prejudicial to the public health to alter, restrict or impede the flow of water in drainage ditches, creeks, streams, rivers and other water courses.

(B) No drainage ditch, creek, stream, river or other water course shall henceforth be blocked or filled in to any degree with any substance or device whatever such that the flow of water toward natural creeks, rivers and water bodies is restricted or impeded except by a written permit issued by the Board of Commissioners. No permit shall be issued except after a public hearing after 10-days' notice on the question whether the proposed restriction or impediment would result in possible harm to the public health.

(Prior Code, § 51.01) (Ord. passed 7-5-1988)

To whom it may concern:

I am writing in regard to the request from Timothy Jennette to fill in the storm relief drain to create a right of way to his property. I have been through numerous steps to try to bring this to the attention of the correct parties to prevent the damage that will be done to my property, as well as the neighboring properties, if this ditch is filled in. I am concerned with the fact of knowing that this ditch serves as an emergency storm relief and has done so for a long time, dating back to the childhood of my mother. My property that neighbors this ditch will see flooding beyond normal measures if this ditch is not in its location to allow for drainage. This drain has been listed as part of the sedge, not a personal property, for a long period of time and somehow through the years it has become listed as his property. If you were to research into past deeds, it shows that this canal is part of the front sedge, not part of Tim's property. This drain was built in order to drain the sedge as it rises to unusual heights during hurricanes and severe storms. I fear that filling in this ditch will cause draining issues similar to that of which we had during Hurricane Emily when the drains were not in correct working order. I saw water stand in my yard at knee high levels for days. Beyond the thought of my own property, this drain serves as a storm relief to a large portion of Frisco and Buxton. Filling it in could cause major flooding issues during bad storms in the future to properties that don't even directly neighbor it.

It bothers me to know that Tim has no concern as to what filling in this ditch will have to those around it. The only thing he seems to care about is bending and breaking the rules that this state has put in place for this kind of storm water drainage in order to be able to fill the ditch and sell the property as quickly as possible. Tim did not contact you asking for permission to begin work on filling in the ditch. Rather, he has asked permission to continue to fill the ditch in after he was caught knowingly proceeding in the unlawful act. The poor ethics and morality that he expressed in breaking this law to achieve his own best interest at the sake of others should be more than enough to not only force him to cease work, but also to fix that what he has already damaged.

However, ethics are not always a strong enough reason to prevent someone from ruining other's livelihoods. With that in mind, there is more at stake than just a storm drainage. The proposed right of way would need to not only fill in a ditch that relieves my property, but also it would damage a very low spot in the property that is considered to be wetlands. Has he proceeded with requesting permits for the necessary work to cross this wetland prior to illegally beginning the process of filling in the canal that neighbors my property? If he had actually planned to do this in a legal manner, then he would have requested permits that would have led to the necessary research in order to grant or deny the construction and land disturbance needed for this right of way long before being told to stop work on filling in this canal. Furthermore, aforementioned, even if it comes to the point where this property is proven not to be a wetland, it serves as an emergency storm relief location as it is to serve as a drain for the majority of properties from Frisco to Buxton if the front sedge fills to a high level. No, this canal does not have a constant flow of water through it, but it does act as an emergency relief.

I couldn't imagine that knowing the importance of this drain, that someone would allow a property owner to claim it as their own, much less backfill it in order to sell the property.

Sincerely,

John Williams

(252) 995-2088



Donna Creef <donnac@darenc.com>

Drainage ditch on parcel #016967900 in Buxton

1 message

Russell Kiddy <capt.russ@yahoo.com>

Sun, May 12, 2019 at 7:49 PM

To: "donnac@darenc.com" <donnac@darenc.com>

The ditch that has been blocked off under highway 12 is/was the only outlet left to drain that and surrounding properties. There is a "high" area between there and Peters Ditch that will not allow for complete drainage in that direction. There used to be a ditch that ran from over that way to behind what is now Qidleys trailer park and joining up with Peters Ditch.

On another note back in the 1980's we looked at that piece of land I believe it was 2 different parcel's.

Just a comment,
Russell D. Kiddy Sr.

1460 E Ridgefield Dr
Hernando, FL 34442
May 7, 2019

Dare County Board of Commissioner
PO Box 1000
Manteo, NC 27954

Re: Parcel 016967900 Buxton, NC

Commissioners:

This letter is being written with regard to Chapter 51.01 of the Dare County Code of Ordinance. We are adamantly **opposed** to the filling of the ditch adjacent to our property.

We have owned this parcel since 1986. Some time in the 90's we had plans drawn up for a restaurant and at that time we were advised CAMA needed to verify no wetland were on the property. CAMA came back with a line at the rear about a foot from the end of the property and said there were in fact evidence wetlands. Our property drops off at the rear and was soggy at that time. There was plant life that was considered wetlands. I still have the documents to support this information, however, they are at my Tennessee residence.

The drainage ditch was placed there for a reason. In the past we have seen water in that ditch. We have been told by the County prior to this that the ditch could not be filled. Again, I believe there are supporting documents at my Tennessee home.

Can the County guarantee me there will be no adverse effect on my property?

Apparently, Mr Jeanette has filled the ditch with cut timbers without permission from the county to do so! Mr Jeanette quick claimed that property years ago with the knowledge that there was a ditch and access to that property was a problem. I noticed last year the property was listed for sale with a realtor.

I believe Mr Jeanette should be made to clear the ditch and restore it to the original condition. He should do that without the use of my property which include no trespassing signs. I also believe this was done without a permit or compliance to the county code in the winter when no one would be aware of what was being done. A fine should be imposed.

Thanking you in advance for your attention in this matter.

Respectfully,

Gayle Dolan



Architect Selection and Contract for Design of DHHS Building Project

Description

Please see the attached Item Summary

Board Action Requested

Select Oakley Collier Architects, PA as architects for the DHHS building project; approve the contract; authorize the County Manager to execute the contract; and adopt the amendment to the capital project ordinance.

Item Presenter

David Clawson, Finance Director

Item Summary: Architect Selection and Contract for Design of the DHHS Building Project

On March 6 the Board approved proceeding with construction at the DHHS buildings, choosing Option 2 of a programming study at an estimated, all-inclusive cost of \$4,850,000. The project will be financed as a part of the Series 2019 Limited Obligation Bonds along with two property purchases, the Animal Shelter, and the COA project. (Note that it is likely that the LOBs will be changed to the 2020 LOBs and issued after 1/1/2020.)

The County issued an RFQ for architectural services and received four responses – Cahoon & Kasten, Lyall Design, Oakley Collier, and Smith Sinnett. On 6/3 the CIPC voted to recommend to the Board that Oakley Collier Architects, PA be selected.

A contract with Oakley Collier Architects is included for approval. The fee is \$440,895 which is 10% of estimated construction costs. The fee amount is equal to that in the Option 2 programming study and the 10% is reasonable when compared to other County projects, taking the high level of remodeling to be involved into consideration. The same percentages for prior projects have been:

- Dare Center 7.95%
- Administration Building 9.87%
- Hatteras Office 10.41%
- RECC/EOC 7.18% high technology costs
- Animal Shelter 11.8% specialty & HVAC design

An amendment to the capital project ordinance is included for approval. It includes the design fee and preliminary estimates of \$20,000 for construction testing and \$25,000 for owner & other costs. As stated above, the source of funds for the project is the 2019 Limited Obligation Bonds and this project has been addressed with a prior reimbursement resolution.

The Board is requested to:

- Select Oakley Collier Architects, PA for the DHHS buildings project;
- Approve the contract;
- Authorize the County Manager to execute the contract; and
- Adopt the amendment to the capital project ordinance.

**County of Dare, North Carolina
Capital Project Ordinance
for
Series 2019 LOBs**

BE IT ORDAINED as authorized by the Board of Commissioners of the County of Dare, North Carolina that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted for the planned Series 2019 Limited Obligation Bonds:

Section 1 This ordinance is to establish a budget for architectural and preliminary costs for Option 2 of the DHHS study approved by the Board on March 6, 2019. This ordinance amends the capital project ordinances adopted September 18, 2017, August 6, 2018, January 22, 2019, February 4, 2019, and June 3, 2019. The architectural budget amount is per the contract with Oakley Collier and the construction testing and owner costs budget amounts are preliminary estimates.

Section 2 The following budget shall be conducted within the Capital Projects Fund (fund #61).

Section 3 The following amounts are appropriated for the project:

DHHS Building Improvements:

Architectural	615620-710900-60337	\$440,895
Construction testing	615620-710911-60337	\$20,000
Owner & other costs	615620-737002-60337	\$25,000

Section 4 The following revenues are anticipated to be available to complete the projects as changed below:

Debt Proceeds S2019 LOBs	613090-470318-98726	\$485,895	increase
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Section 5 After this amendment, the following amounts will have been budgeted for the S2019 LOBs to date:

COA	\$110,000	
Animal Shelter	\$280,540	
DHHS buildings	\$485,895	
Manteo property & renovations	\$1,000,000	
Buxton property	\$325,000	
Total		\$2,201,435

Section 6 The Finance Officer is directed to report the financial status of the project as a part of the normal ongoing financial reporting process.

Section 7 Copies of this capital project ordinance shall be furnished to the Budget Officer, the Finance Officer and to the Clerk to the Board of Commissioners.

Adopted this 17th day of June, 2019.

Chairman, Board of Commissioners

[SEAL]

Cheryl Anby, Clerk to the Board of Commissioners



AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 5th day of June in the year 2019
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Dare County
PO Box 1000
Manteo, NC 27954

and the Architect:
(Name, legal status, address and other information)

Oakley Collier Architects, PA
109 Candlewood Rd
Rocky Mount, NC 27804

for the following Project:
(Name, location and detailed description)

Dare County DHHS Addition
Manteo, NC

The scope of the project is to join the existing Health and Social Services buildings into one unit to provide a common intake area and additional square footage, to renovate existing lobby spaces into additional square footage, to renovate existing building systems, and to renovate and change existing building functional spaces.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Provide design documentation, bidding and construction administration services required for the expansion of the existing Dare County DHHS buildings located at 107 and 109 Exeter Street in Manteo, NC. Refer to Option 2 of the Dare County DHHS Study prepared by Oakley Collier Architects, PA.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The scope of the project is to join the existing Health and Social Services buildings into one unit to provide a common intake area and additional square footage, to renovate existing lobby spaces into additional square footage, to renovate existing building systems, and to renovate and change existing building functional spaces. A preliminary program and budget has been prepared and indicates a project of approximately 8,500 gross square feet of new construction plus additional renovations totaling 50,500 total square feet.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

\$4,850,000.00

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§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

TBD

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Construction Manager at Risk.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

(List name, address, and other contact information.)

David Clawson
PO Box 1000
Manteo, NC 27954
Telephone Number: 252-475-5731
Email Address: davec@darenc.com

1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address, and other contact information.)

N/A

§ 1.1.9 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

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TBD

.2 Surveyor:

TBD

.3 Other, if any:

(List any other consultants and contractors retained by the Owner.)

TBD

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

Timothy D. Oakley
109 Candlewood Rd
Rocky Mount, NC 27804
Telephone Number: 252-937-2500
Email Address: toakley@oakleycollier.com

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Stewart Engineering, Inc. – Structural
223 S. West Street, Suite 1100
Raleigh, NC 27603

.2 Mechanical Engineer:

Stanford White Associates – MEP
1620 Midtown Place
Raleigh, NC 27609

.3 Electrical Engineer:

Stanford White Associates – MEP
1620 Midtown Place
Raleigh, NC 27609

.4 Civil Engineer:

Albemarle & Associates, Ltd. – Civil
115 West Saint Clair Street
Kill Devil Hills, NC 27948

§ 1.1.11.2 Consultants retained under Supplemental Services:

N/A

§ 1.1.12 Other Initial Information on which the Agreement is based:

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N/A

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than one million dollars (\$ 1,000,000.00) for each occurrence and two million dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

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§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than one million dollars (\$ 1,000,000.00) each accident, one million dollars (\$ 1,000,000.00) each employee, and one million dollars (\$ 1,000,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than two million dollars (\$ 2,000,000.00) per claim and two million dollars (\$ 2,000,000.00) in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the

Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

1. facilitating the distribution of Bidding Documents to prospective bidders;
2. organizing and conducting a pre-bid conference for prospective bidders;
3. preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
4. organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

(Paragraphs deleted)

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

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§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

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§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Architect
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Measured drawings	Architect
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and planning	Not Provided
§ 4.1.1.6 Building Information Model management responsibilities	Architect
§ 4.1.1.7 Development of Building Information Models for post construction use	Architect
§ 4.1.1.8 Civil engineering	Architect
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	Not Provided

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Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.21 Telecommunications/data design	Owner
§ 4.1.1.22 Security evaluation and planning	Owner
§ 4.1.1.23 Commissioning	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Owner
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

To be provided at a later date.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

To be provided at a later date.

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- 1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

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- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Weekly visits to the site by the Architect or Architect's representative during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within twenty four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of

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any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

(Paragraphs deleted)

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided

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that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

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§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

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ARTICLE 11 COMPENSATION

§ 11.1 For the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum
(Insert amount)

\$440,895.00

§ 11.2 For the Architect’s Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Supplemental Services designated in Section 4.1.1 shall be provided as part of the Architects’ Basic Services and covered in the compensation for Basic Services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Hourly Bill Rates:

Principal	\$235
Sr. Designer	\$215
Sr. Project Manager	\$215
Project Manager	\$175
Construction Administrator	\$150
Production	\$100
Administrative	\$65

§ 11.4 Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus twenty percent (20%), or as follows:
(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	twenty	percent (20	%)
Design Development Phase	fifteen	percent (15	%)
Construction Documents Phase	forty	percent (40	%)
Procurement Phase	five	percent (5	%)
Construction Phase	twenty	percent (20	%)
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Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner’s most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner’s budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Hourly Bill Rates:

Principal	\$235
Sr. Designer	\$215
Sr. Project Manager	\$215
Project Manager	\$175
Construction Administrator	\$150
Production	\$100
Administrative	\$65

(Table deleted)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Permitting and other fees required by authorities having jurisdiction over the Project;
- .3 Printing, reproductions, plots, and standard form documents;
- .4 Postage, handling, and delivery;

(Paragraph deleted)

- .5 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .6 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;

(Paragraphs deleted)

- .7 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus twenty percent (20 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

N/A

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of zero (\$ 0.00) shall be made upon execution of this Agreement for registration fees and other fees payable to the

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Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

1.5 % monthly

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2

(Paragraphs deleted)

Other documents:

(List other documents, if any, forming part of the Agreement.)

Certificate of Insurance

Dare County DHHS Study

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

Robert Outten, County Manager
(Printed name and title)



ARCHITECT *(Signature)*

Timothy D. Oakley, Principal
(Printed name, title, and license number, if required)



Architect Recommendations by the Capital Improvements Planning Committee

Description

The Board of Commissioners will receive the Committee's recommendations for the selection of an architect for the College of the Albemarle Project.

Board Action Requested

Discuss and take appropriate action.

Item Presenter

County Manager, Robert Outten



APTIM Agreement - Shallowbag Bay Project

Description

Attached is an Agreement with APTIM pertaining to services for Shallowbag Bay. This project is funded through State Funds with no County dollars.

Board Action Requested

Approve Agreement

Item Presenter

County Manager, Robert Outten



Kenneth Willson
President
Aptim Coastal Planning & Engineering of North Carolina, Inc.

4038 Masonboro Loop Road
Wilmington, North Carolina
Tel: +1 910-791-9494
Kenneth.Willson@aptim.com

May 28, 2019

Robert L. Outten
Dare County
954 Marshall C Collins Dr. Room 286
Manteo, NC 27954

Subject: Proposal: Manteo (Shallowbag) Bay Maintenance Dredging Project

Dear Mr. Outten:

Aptim Coastal Planning & Engineering of North Carolina, Inc. (APTIM) is pleased to provide this proposal to Dare County (OWNER) for project management, environmental, geotechnical, engineering, and bidding assistance services to facilitate a one-time maintenance dredging event within Ranges 1-4 of the federally authorized Manteo (Shallowbag) Bay navigation project. APTIM has a special preferred relationship with Aptim Environmental & Infrastructure, LLC, and through that relationship APTIM will utilize their personnel, resources and assets to perform the proposed Services.

The Scope of Professional Services (the Services) is attached to this proposal as Exhibit A and is broken into four (4) Tasks which include: 1) Environmental Services, 2) Geotechnical Service, 3) Engineering Design, Construction Plans and Specifications and 4) Contractor Bidding, Selection and Negotiations. The Services will be performed for a lump sum fee of \$231,871.01. Exhibit B includes a breakdown of cost by Task.

Barring any unforeseen circumstances, APTIM anticipates permit applications will be submitted to the United States Army Corps of Engineers (USACE) and the Division of Coastal Management (DCM) within 135 days of receiving your written notice to proceed. A draft of the Construction Bid Documents are anticipated to be provided to the County within 6 months following written authorization to proceed.

Please see Exhibit C – List of Deliverables, for a description of each of the following deliverables identified as part of this proposal:

- Monthly Progress Reports;
- 2nd Scoping Meeting;
- NC Division of Coastal Management Major CAMA Permit and Dept. of the Army GP 291 Permit Applications;
- Sediment Analysis Report;
- Boundary and Topographic Survey of Dredge Disposal Site;
- Draft Construction Bid Documents;
- Final Construction Bid Documents; and
- Formal Recommendation Lowest Responsive and Responsible Bidder

APTIM's performance of the proposed Services is conditioned upon mutually acceptable contract terms and conditions. In that regard, attached to this proposal is our Services Agreement for your consideration as the terms and conditions that will govern our performance of the proposed Services.

If this proposal is acceptable to you, please have the attached Services Agreement signed, and return it to me. APTIM will then sign the Services Agreement and return a fully signed copy to you for your records.

Sincerely,

APTIM COASTAL PLANNING & ENGINEERING OF NORTH CAROLINA, INC.

A handwritten signature in black ink, appearing to read 'K. Willson', written over a horizontal line.

Kenneth Willson
President

**APTIM COASTAL PLANNING & ENGINEERING OF NORTH CAROLINA, INC.
SERVICES AGREEMENT
FIXED PRICE BASIS**

All in accordance with the following terms and conditions.

1. **SCOPE OF SERVICES:** APTIM COASTAL PLANNING & ENGINEERING OF NORTH CAROLINA, INC. ("APTIM") agrees to perform for the undersigned CLIENT, engineering and consulting ("Services") described in attached Proposal dated May 28, 2019 and/or as follows:

Project Management, Environmental, Geotechnical, Engineering and Bidding Assistance Services with the Manteo Bay Maintenance Dredging Project.

2. **FEES, INVOICES AND PAYMENTS:** The Services will be performed on a fixed price basis for **Two Hundred Thirty One Thousand, Eight Hundred Seventy One Dollars and 01/100 (\$231,871.01)**. Invoices will be submitted by no more frequently than every two weeks, 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 APTIM 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 APTIM in performing the Services, CLIENT shall (i) provide APTIM with relevant material, data, and information in its possession pertaining to the specific project or activity, (ii) consult with APTIM when requested, (iii) permit APTIM reasonable access to relevant project sites, (iv) ensure reasonable cooperation of CLIENT's employees in APTIM'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 APTIM, business or technical information that CLIENT clearly marks in writing as confidential or proprietary, APTIM will exercise reasonable efforts to avoid the disclosure of such information to others. Nonetheless, CLIENT shall treat as confidential all information and data furnished to it by APTIM in connection with this Agreement including, but not limited to, APTIM's technology, formulae, procedures, processes, methods, trade secrets, ideas, inventions, and/or computer programs; and

CLIENT shall not disclose such information to any third party.

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 APTIM 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 APTIM; or (vi) any other cause beyond the reasonable control of APTIM, **then** 1) the time for completion of the Services shall be extended based upon the impact of the delay, and 2) APTIM shall receive an equitable compensation adjustment. Any such equitable adjustment shall be based on APTIM's then current Time and Material Rates, as may be provided in a Rate sheet attached hereto.
6. **INSURANCE:** APTIM 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, APTIM will endeavor to obtain said coverage, and CLIENT shall pay any extra costs therefor.

7. **INDEMNITIES:** APTIM 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 APTIM, 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 APTIM (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 APTIM SHALL BE TO REQUIRE APTIM TO RE-PERFORM ANY DEFECTIVE SERVICES. APTIM'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, APTIM 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 APTIM for all Services performed hereunder up to the date of such termination. In addition, if CLIENT terminates, CLIENT shall pay APTIM all reasonable costs and expenses incurred by

APTIM in effecting the termination, including, but not limited to non-cancelable commitments and demobilization costs.

11. **ASSIGNMENT:** Neither APTIM 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, APTIM 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 APTIM to the CLIENT. All previous proposals, offers, and other communications relative to the provisions of these Services by APTIM, 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 APTIM 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 APTIM 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 APTIM 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 APTIM 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 APTIM 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 _____, 2019.

APTIM COASTAL PLANNING & ENGINEERING OF NORTH CAROLINA, INC.

CLIENT: COUNTY OF DARE, NC

By (Sign): _____
 Print Name: _____
 Title: _____
 Address: _____

 Phone: _____
 Fax: _____
 E-mail: _____

By (Sign): _____
 Print Name: _____
 Title: _____
 Address: _____

 Phone: _____
 Fax: _____
 E-mail: _____

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
DARE COUNTY, NORTH CAROLINA
MANTEO (SHALLOWBAG) BAY MAINTENANCE DREDGING PROJECT**

Aptim Coastal Planning & Engineering of North Carolina, Inc. (APTIM) will provide project management, environmental, geotechnical, engineering and bidding assistance services to the County of Dare (OWNER) to facilitate a one-time maintenance dredging event within Ranges 1-4 of the federally authorized Manteo (Shallowbag) Bay navigation project. A detailed description of each of these services follows.

PROJET MANAGEMENT

The APTIM project manager will be responsible for project administration of the program with assistance from other senior staff as appropriate. Administration includes coordination with the client and consultants, progress and status updates, budget control, scheduling, planning, internal meetings, and other associated management tasks required to complete the project according to the scope in a timely manner. APTIM's project manager will provide the OWNER, with a one (1) page monthly summary of activities completed, upcoming milestones, and any anticipated changes to the scope or schedule.

TASK 1- ENVIROMENAL SERVICES

Several issues emerged during the May 1, 2019 interagency scoping meeting that necessitate a follow-up scoping meeting prior to the development of the required permit applications. As such, APTIM will convene an additional scoping meeting within six (6) weeks of receiving a notice to proceed. During this meeting, APTIM will provide a greater level of detail of the proposed project, including the attributes of specific proposed dredged disposal sites, to the meeting participants. In turn, regulatory and resource agencies will be positioned to provide a greater level of guidance in regards to the appropriate permitting and environmental documentation approach.

Following the second scoping meeting and based on the assumption that the project will be designed to allow for the most expeditious permitting approach, APTIM will assist the OWNER in obtaining the necessary permits and approvals from all relevant state and federal agencies. It is understood at this time that the following state permits and approvals will be required:

- North Carolina Division of Coastal Management (NCDCM), Coastal Area Management Act (CAMA) Major Permit.
- NC Division of Water Resources (NCDWR) General Water Quality Certification.
- NC State Historic Preservation Office's concurrence.
- NC Division of Energy, Mineral, and Land Resources (NCDEMLR) Erosion and Sediment Control Permit
- NC Department of Environmental Quality (NCDEQ) Construction General Permit (NCG01).

Federal permits and approvals will include:

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- Department of Army (DOA) USACE General Permit 291 in compliance with Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act.
- U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) concurrence with Section 7 of the Endangered Species Act (ESA).
- NMFS concurrence with the Magnuson-Stevens Fishery Conservation and Management Act.
- U.S. Environmental Protection Agency (USEPA) concurrence with the Clean Water Act (CWA).

In order to receive the aforementioned permits and approvals, APTIM will first develop and submit the NCDCM CAMA Major Permit application on behalf of the OWNER within 90 days following the second interagency scoping meeting. The CAMA Major Permit application package will include the required MP-1, MP-2, and MP-3 forms along with plan drawings and adequate additional information that will serve to satisfy the various divisions and agencies who will review this package. APTIM engineers will develop preliminary designs for the disposal site in order to provide sufficient details for the permit drawings. The permit application will also include information pertaining to the characteristics of the disposal sites, threatened and endangered species (marine and terrestrial), essential fish habitat, and other natural resource concerns. Four (4) hard copies and ten (10) CDs of the NCDCM application, project drawings, and other attachments will be produced and provided to NCDCM for dissemination to the resource agencies for review. The submittal and acceptance of a complete NCDCM CAMA Major Permit application will serve as a project deliverable.

Assuming that upland dredge disposal locations are utilized for this project, APTIM will develop and submit an Erosion and Sediment Control Permit to NCDEMLR. Three (3) sets of plan drawings will be submitted as part of this permit application package along with a signed and notarized Financial Responsibility/Ownership form. Following the issuance of the Erosion and Sediment Control Permit, APTIM will submit the required on-line application forms to NCDEQ for the issuance of the NCG01 Permit.

Following the submittal of the DCM Major CAMA Permit application, APTIM will coordinate with the USACE to process a General Permit 291 (GP 291). The application for this joint state and federal authorization under this General Permit will be accepted through the NCDCM. Receipt of completed CAMA Major Permit application by the NCDCM will initiate the State's field review that will include a site visit and preparation of a Field Investigation Report as well as a state Bio-Report. NCDCM will then forward a copy of the complete application, its Field Investigation Report and its Bio-Report to the USACE thereby initiating federal review of the project. The USACE will then provide copies of the application and plans, the NCDCM's Field Investigation Report, and the state Bio-Report, to the USFWS, NMFS, and the EPA. Receipt of this material will

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initiate the Federal Agencies' review. The Federal Agencies will be allowed thirty (30) days to provide the USACE with their comments and recommendations, including any proposed permit special conditions. Federal concurrence of existing NEPA documentation and informal consultation with USFWS and the NMFS will occur as part of the overall GP 291 process coordinated by the USACE as part of the NCDCEM process.

APTIM proposes to participate in up to three (3) additional meetings with the various agencies/stakeholders coordinating the permit application's development and review. Additional coordination with resource agencies/stakeholders will be conducted via telephone and email correspondences as needed.

In the event a state or federal agency solicits a Request for Additional Information (RAI) in response to the permit applications, an additional task order proposal will be submitted to OWNER under a modified SOW. Furthermore, if multiple upland dredge disposal sites are selected for this project, more than one Erosion and Sediment Control permit application may be required. This would also result in an additional task order proposal.

TASK 2- GEOTECHNICAL SERVICES

The proposed project aims to conduct a one-time maintenance dredging event within Ranges 1-4 of the federally authorized Manteo (Shallowbag) Bay navigation channel. The authorized depth of the channel is -12 ft. MLLW. APTIM has coordinated extensively with staff from the USACE Wilmington District, the NC DOT, and the NC Ferry Division to determine if existing boring data is available to characterize the material in the channel. At this point, no such data has been identified. Given the absence of sediment characteristic data, APTIM proposes to collect and analyze five (5) vibracores throughout the proposed channel in which maintenance dredging will occur.

APTIM will utilize a sub-contractor to collect the vibracore samples. APTIM staff will oversee the operation and be present during the time samples are collected. Vibracores will aim to retrieve undisturbed sediment samples from a depth of at least -14 ft. MLLW. Length of the actual cores will depend on water depth. The final depth of recovery may vary based on sea conditions at the time of sampling.

Based on comments received from the Division of Water Quality, sediments recovered from the vibracores will be characterized for the pollutants comprising the Resource Conservation and Recovery Act (RCRA) 8 heavy metals of Arsenic, Barium, Cadmium, Chromium, Lead, Mercury, Selenium, and Silver. Within 15 minutes of collection of each vibracore, the cores will be sectioned into 3-foot sections and samples will be obtained from the top of each split section. Samples will be placed into appropriate containers provided by the lab. The closed samples will be kept cooled in a container capable of maintaining a temperature of 2 degrees Celsius +/- 2 degrees, transported to the laboratory, and verified by the laboratory upon its receipt. The sediment samples will be analyzed according to U.S. EPA Method 200.7: Determination of Metals and Trace

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Elements in Water and Wastes by Inductively Coupled Plasma-Atomic Emission Spectrometry. EPA Method 200.7 is accepted as equivalent to EPA Method 6010 by the NC DENR. Results of the analysis will be included in the sediment analysis report and laboratory analytical reports will be included as an appendix.

APTIM geologists will log the vibracores by describing sedimentary properties by layer in terms of layer thickness, color, texture (grain size), composition and presence of clay, silt, gravel, or shells and other identifying features. The vibracores will be photographed in 2.0 ft. intervals. Sediment samples will be extracted from the vibracores at irregular intervals based on distinct stratigraphic layers in the sediment sequence. The vibracores will then be wrapped and archived. Cores will be stored for a period of up to two (2) years or a time following the construction of the project, whichever comes first. After this time, cores will be relinquished to the client or disposed of.

The sediment samples taken from the vibracores during the logging process will be analyzed to determine color, percent fines (mud/silt) and grain size distribution. During sieve analysis, any obvious uncharacteristically large fragments (such as whole shell or large shell fragments) will be removed and the description (weight and size) of the material will be noted. The wet, dry and washed Munsell colors will be noted. Sieve analysis of the sediment samples will be performed in accordance with the American Society for Testing and Materials (ASTM) Standard Methods Designation D 422-63 for particle size analysis of soils. This method covers the quantitative determination of the distribution of sand size particles. For sediment finer than the No. 230 sieve (4.0 phi) the ASTM Standard Test Method, Designation D 1140-00 will be followed.

The sediment analysis included in this scope of work does not include analysis for any carbonate analysis.

Sediment Analysis Report

APTIM will develop a sediment analysis report to be submitted as part of the NEPA documentation and CAMA Major Permit application. In addition, up to two (2) hardcopies and two (2) digital copies of the report will be produced and provided to the COUNTY. Furthermore, the sediment data will be included in the construction plans and specifications provided to bidders. The Sediment Analysis Report will be composed of a brief letter report describing sediment sampling and analysis methods, project setting maps showing the location of the sediment samples, photographs and logs of the cores, and sediment grain size distribution curves.

TASK 3 – ENGINEERING DESIGN, CONSTRUCTION PLANS AND SPECIFICATIONS

A detailed engineering design, construction plans and specifications will be prepared for the Manteo (Shallowbag) Bay Project. The channel design has been previously established by the USACE; however, slight modifications to the design may be required near the

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Elizabeth II dock. Furthermore, the disposal site proposed for the project has not previously been used. Through the use of a sub-contractor, APTIM will collect a boundary and topographic survey of the proposed upland disposal site. APTIM will combine this data with available LiDAR data to develop a plan for the disposal site including dikes, water control structures, and spillways.

The construction plans will include plan views and cross-sections sufficient for the construction of the Project. At present, the project will involve the removal of between 40,000 and 60,000 cy of sediment from Ranges 1 – 4 of the federal channel. Sediment will be pumped to an upland disposal site located southeast of Shallowbag Bay between Hwy 64 and Russel Twifford Road.

The plans will include detailed plan view and cross section view drawings of the proposed channel, including allowable dredge cut depths. The plans will also include plan view and cross section drawings of the disposal site indicating position, elevation, and slope of proposed containment dikes, water controls structures, and spillway. The plans will provide survey monumentation information, which will allow the contractor to control and construct the channel and make improvements to the disposal site as needed.

This scope of work assumes the following:

- The OWNER will provide the necessary permissions to allow for disposal of dredge spoil material to private property;
- Channel bathymetry data available through the U.S. Army Corps of Engineers Wilmington District Navigation website will be sufficient to prepare plans for channel dredging; and

APTIM will develop a specifications package for the project, which will be divided into two general categories. The first section will include bidding requirements and contract forms for retention of construction contractors. Bidding requirements will include the Invitation to Bid, Instructions to Bidders, Bid Form and other appropriate documents. APTIM will develop the bid form to be included in the bid package. The bidding requirements will also address the bid bond required for the project. The bidding requirements section will also include such items as the Certificate of Corporate Authority, Acknowledgments of the Contractor, Performance and Payment Bonds, Final Receipt, and any special instructions.

The second section of the specifications will include General Conditions, Technical Provisions and Environmental Protection. The General Conditions portions of the contract will include information related to the commencement, prosecution and completion of the work. It will address such issues as liquidated damages, performance of work by the contractor and subcontractors, and a designation of certain contractor personnel for tasks such as project superintendent. Supplemental General Conditions are project related and will describe the layout of the beach fill, address mobilization and demobilization from the

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project area and acceptance sections for beach fill. It will identify the method of payment to the contractor and the clauses for liquidated damages, if necessary. Project details of a general nature will be included in this section. Lastly, this section includes the OWNER's right to terminate the contract, liability insurance, liens and other legal issues. APTIM will prepare the supplemental General Conditions.

The Technical Provisions will identify the work to be accomplished. It will include the order of work, the project schedule, excavation requirements, disposal facility construction requirements including clearing and grubbing, dike construction, spillway construction, and other issues related to construction. It will address issues such as clean-up and nighttime operations. A QA/QC Plan approved by the USACE and NCDCM may also be incorporated into these provisions.

A section on environmental protection will be included in the specifications. This section will identify the important clauses contained in the permits, including a copy of permits received for the project. The contractor will be advised that he/she is required by law to abide by all the conditions provided by Federal and State permits and licenses for the project. Issues to be addressed in this section include turbidity control, soil erosion control, protection of environmental resources, restoration of landscape damage, maintenance of pollution control facilities, and a requirement for an environmental protection plan.

The construction contract, plans, and specifications will be submitted for review to OWNER, USACE and the North Carolina Division of Coastal Management (NCDCM) in draft form. Upon approval, they will be incorporated into a bid package and solicited to perspective contractors.

TASK 4 - CONTRACTOR BIDDING, SELECTION & NEGOTIATION

APTIM will assist the OWNER in the selection of a construction contractor for the channel maintenance project. The OWNER's purchasing department will manage the bidding process with assistance from APTIM. The bid package prepared by APTIM will be made available for distribution to all interested contractors. APTIM will provide a list of eligible contractors to the OWNER for bidding purposes. In conjunction with the OWNER, APTIM will conduct a pre-bid conference, inviting all contractors, representatives of the USACE, and representatives of the NCDCM to attend. The pre-bid conference will provide an opportunity to describe the project and to solicit questions from potential contractors. The conference will be conducted at the project site and a tour will be conducted with the potential contractors of the project site to answer any additional questions. OWNER representatives will be on hand to address issues related to infrastructure, OWNER requirements and any other issues affecting the local government. The potential contractors will be provided thirty days to submit a bid for the project.

During the bidding process, APTIM will answer questions and issue addenda as required. This proposal assumes up to two (2) addenda may be issued during the bidding process.

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DARE COUNTY, NORTH CAROLINA
MANTEO (SHALLOWBAG) BAY MAINTENANCE DREDGING PROJECT**

An APTIM representative will be present for the bid opening, and will assist the OWNER in reviewing the bids and evaluation of the low bidder, taking into consideration the capability of the contractor (low bidder) in constructing the project. APTIM will provide the OWNER a written recommendation concerning the selection of the contractor. APTIM will also assist the OWNER in negotiating with the low bidder if required, to bring the project in line with available budget.

This proposal assumes a contractor will be selected through the completion of the bidding process described above. If a contractor is not selected by the OWNER through the conduct of this bidding process and the OWNER decides to modify the bid package and re-bid the project, APTIM may submit a change order request to cover its cost in modifying the bid documents and assisting the OWNER with additional bidding services.

The information contained in this proposal is confidential commercial information and shall not be used or disclosed, except for evaluation purposes, provided that if a contract is awarded to APTIM as a result of or in connection with the submission of this proposal, the requester shall have the right to use or disclose the data to the extent provided in the contract. This restriction does not limit the requester's right to use or disclose any technical data obtained from another source without restriction.

**EXHIBIT B:
BREAKDOWN OF COSTS
DARE COUNTY, NORTH CAROLINA
MANTEO (SHALLOWBAG) BAY MAINTENANCE DREDGING PROJECT**

Table 1. Breakdown of the total cost of the environmental permitting, engineering design, and bidding assistance associated with the Manteo (Shallowbag) Bay Maintenance Dredging Project.

TASK	DESCRIPTION	Cost
1	Environmental Services	\$102,285.74
2	Geotechnical Services	\$39,242.07
3	Engineering Design, Construction Plans and Specifications	\$71,870.00
4	Contractor Bidding, Selection & Negotiations	\$18,473.20
TOTAL:		\$231,871.01

**EXHIBIT C:
LIST OF DELIVERABLES
DARE COUNTY, NORTH CAROLINA
MANTEO (SHALLOWBAG) BAY MAINTENANCE DREDGING PROJECT**

The following items have been identified as deliverables for the completion of this scope of work.

- Monthly Progress Reports;
- 2nd Scoping Meeting
- NC Division of Coastal Management Major CAMA Permit Modification and Dept. of the Army GP-291 Permit Applications;
- Sediment Analysis Report;
- Boundary and Topographic Survey of Dredge Disposal Site;
- Draft Construction Bid Documents;
- Final Construction Bid Documents; and
- Formal Recommendation Lowest Responsive and Responsible Bidder

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

Monthly Progress Reports: APTIM will provide a 1-page summary of the project status via e-mail approximately every 30 days during the course of the anticipated 12-month contract period. The letter will describe activities completed throughout the month and update the anticipated schedule of milestones as appropriate.

2nd Scoping Meeting: APTIM will convene a scoping meeting within six (6) weeks of receiving written authorization to proceed. During this meeting, APTIM will provide a greater level of detail of the proposed project, including the attributes of specific proposed dredged disposal sites, to the meeting participants. APTIM will distribute meeting minutes to all participants including Dare County.

NC Division of Coastal Management Major CAMA Permit Modification and Dept. of the Army GP-291 Permit Applications: The Scope of Professional Services includes the development and submittal of the complete Major CAMA permit modification and Dept. of the Army GP-291 permit applications directly to the NC Division of Coastal Management and US Army Corps of Engineers, respectively. Barring any unforeseen circumstances, these applications will be submitted to the appropriate agencies within 135 days following written authorization to proceed.

Sediment Analysis Report: APTIM will develop a sediment analysis report to be submitted as part of the NEPA documentation and CAMA Major Permit application. The Sediment Analysis Report will be composed of a brief letter report describing sediment sampling and analysis

**EXHIBIT C:
LIST OF DELIVERABLES
DARE COUNTY, NORTH CAROLINA
MANTEO (SHALLOWBAG) BAY MAINTENANCE DREDGING PROJECT**

methods, project setting maps showing the location of the sediment samples, photographs and logs of the cores, sediment grain size distribution curves, and results of the heavy metal analysis. Barring any unforeseen circumstances, the sediment analysis report will be provided within 120 days following written authorization to proceed.

Boundary and Topographic Survey of Dredge Disposal Site: Through the use of a sub-contractor, APTIM will collect a boundary and topographic survey of the proposed upland disposal site. APTIM will combine this data with available LiDAR data to develop a plan for the disposal site including dikes, water control structures, and spillways. Dare County will be provided a copy of the survey. Barring any unforeseen circumstances, the survey will be completed and provided within 90 days following written authorization to proceed.

Draft Construction Bid Documents: As described in the Scope of Professional Services under Task 3, APTIM will develop construction plans and specifications for the project. The plans and specifications will be compiled into a formal bidding documents package that can be used by the County to solicit bids from contractors to construct the proposed project. The bid documents will include invitation to bid, instructions to bidders, bid forms, and other bidding requirements. Likewise the bidding documents will include contract forms for retention of construction contractors, general conditions, technical provisions and environmental protection. A Draft version of the bid documents will be provided for review. Barring any unforeseen circumstances, the draft construction bid documents will be provided within 6 months following written authorization to proceed.

Final Construction Bid Documents: Upon submittal of the draft construction bid documents to the County for review, APTIM will await comments. Once comments have been received from the County, APTIM will address comments and finalize the construction bid documents. Barring any unforeseen circumstances, the final construction bid documents will be provided within two (2) weeks of receipt of all comments from the County.

Formal Recommendation of Lowest Responsive and Responsible Bidder: As described in the Scope of Professional Services under Task 4, APTIM will assist in the evaluation of bids received from perspective contractors. Within two (2) weeks following the bid opening, APTIM will provide a formal recommendation on which contractor is the lowest responsive and responsible bidder.



Consent Agenda

Description

1. Approval of Minutes (06.03.19)
2. Public Works/Budget Amendment for Surplus Property Sold and Maintenance and Repair of Equipment
3. Public Health Division - Veterans' Care Agreement
4. Tax Collector's Report

Board Action Requested

Approval

Item Presenter

County Manager, Robert Outten



Approval of Minutes

Description

The Board of Commissioners will review and approve their previous Minutes, which follow this page.

Board Action Requested

Approve Previous Minutes

Item Presenter

County Manager, Robert Outten



County of Dare

P.O. Box 1000 | Manteo, NC 27954

MINUTES

DARE COUNTY BOARD OF COMMISSIONERS MEETING

Dare County Administration Building, Manteo, NC

9:00 a.m., June 3, 2019

Commissioners present: Chairman Robert Woodard, Vice Chairman Wally Overman
Rob Ross, Steve House, Jim Tobin, Danny Couch, Ervin Bateman

Commissioners absent: None

Others present: County Manager/Attorney, Robert Outten
Deputy County Manager/Finance Director, David Clawson
Public Information Officer, Dorothy Hester
Clerk to the Board, Cheryl Anby and retiring Clerk Gary Lee Gross

A full and complete account of the entire Board of Commissioners meeting is archived on a video that is available for viewing on the Dare County website www.darenc.com.

At 9:01 a.m. Chairman Woodard called to order the regularly scheduled meeting with appropriate prior public notice having been given. He invited Rev. Cherri Wheeler, a retired U.S. Air Force Chaplain to share a prayer, and then he led the Pledge of Allegiance to the flag.

Note – some agenda items were handled out of sequential order to accommodate the time specific Public Hearing scheduled for 10:00 a.m.

Chairman Woodard offered a moment of silence for the families who lost loved ones in the Virginia Beach Municipal Building shooting tragedy.

ITEM 1 – OPENING REMARKS – CHAIRMAN’S UPDATE

Following is a brief outline of the items mentioned by Chairman Woodard during his opening remarks, which can be viewed in their entirety in a video on the Dare County website –

- Earlier this morning he administered the oath of office to Cheryl C. Anby, new Clerk to the Board of Commissioners, as Gary L. Gross is retiring the end of June.
- Announced this meeting would be the first live meeting broadcasted on the internet.
- Noted that we have just enjoyed Memorial Day, which this year also commemorated the 75th anniversary of D-day. He enjoyed a visit with his family this year.
- Senator Thom Tillis came to town this past Friday and together with Vice-Chairman Overman and Commissioner Bateman, they met with Mayor Davies. The function was

hosted by Kill Devil Hills at their town hall. He said he brought the Senator up to date with our budget, beach nourishment, bridges and the College of the Albemarle.

- Reported his attendance to the opening season of The Lost Colony, the oldest drama in the United States, adding that 70% of the cast members are new this year. Although the evening was cut short due to inclement weather, he assured we would be impressed with this year's production.
- Gave details of how he enticed Commissioner Terry Gray to Dare Days so he could be surprised with his presentation to him as Citizen of the Year. The award truly honored his many selfless contributions to our area to include his efforts for children at Christmas.
- As the Board continues to acknowledge our veterans, Chairman Woodard presented a Certificate of Appreciation to one of our outstanding local veterans, Kelli Harmon. She served in Afghanistan, received the Bronze Star, the 2019 Distinguished Service Award as a North Carolina combat veteran, and now continues to have a positive impact on our community and local veterans.

ITEM 2 – PRESENTATION OF COUNTY SERVICE PINS

- 1) Clei Hill, Community Health Technician, received a 10-year pin.
- 2) Eleen Bryant, Finance Department, received a 20-year pin.
- 3) Tina Tran, Health and Human Services, received a 20-year pin.
- 4) Toni Midgett, Assistant Register of Deeds, received a 25-year pin.
- 5) Brandi Combs, Finance Department, received a 30-year pin.

ITEM 3 – EMPLOYEE OF THE MONTH – JUNE, 2019

Mike Hollowell received the Employee of the Month award from Elizabeth Reilly and Tracie Porter. Ms. Porter described the many ways that Mr. Hollowell, having received the award once before, is an asset to Dare County with consistent pride in his work and willingness to help others.

ITEM 4 – PUBLIC COMMENTS

At 9:36 a.m. the Manager outlined the procedure for making public comments in Manteo and via the video link to the Fessenden Center Annex in Buxton. No one responded to the invitation to address the Board. The County Manager closed Public Comments at 9:37 a.m.

ITEM 5 – PROCLAMATION – VULNERABLE ADULT AND ELDER ABUSE AWARENESS

Commissioner Tobin presented a proclamation describing the need for a comprehensive system of protection for vulnerable and older adults. The proclamation designates the period from Mother's Day to Father's Day as "Vulnerable Adult and Elder Abuse Awareness Month". He added we need to continue our local efforts on this ongoing and prevalent problem, explaining it included financial, physical and often emotional abuse.

MOTION

Vice Chairman Overman motioned to adopt the proclamation as presented.

Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

ITEM 6 – AIRPORT MODERNIZATION REPORT

Presentation by Brent Lane, Principal Investigator with Aerogeny Strategies, provided a final report outlining the Dare County Regional Airport Economic Impact Assessment, to assess the impact and feasibility of expanding and modernizing the Dare County Regional Airport. His report included:

- How the present air service affects this community – interviews included local government, the boat industry, business leaders, the Airport Authority, Airport/tenants and tourism/attractions
- Expansion could create more jobs, encourage new businesses and enhance revenues

He added there are reasons to be optimistic about the project:

- Growing demand for air service to the Outer Banks
- Connectivity to global and national customers – increased tourism flow
- Boat builders here customize boats for global customers
- High-end tourism interest
- New companies will come here and stay here

He concluded that currently we are less adequate – inaction may not be an option from our current configuration. If the airport is modernized, we could look into commercial service for the future. Expanding the runway will help solidify and increase the benefits the airport offers such as public safety issues and medical services, coupled with the economic component to allow us to better compete globally.

ITEM 7 – BUXTON BEACH NOURISHMENT 2021 MAINTENANCE PROJECT COASTAL SCIENCE & ENGINEERING AMENDMENT #2 TO CONTRACT (Att. # 1)

Mr. Clawson presented a summary of the project and introduced Tim Kana and Haiqing Kaczkowski from Coastal Science & Engineering. Ms. Kaczkowski gave a comprehensive report on the Buxton project including its history and plans for maintenance. She outlined project key dates and milestones and explained the impact that hurricanes have had on the project and outlined FEMA's Public Assistance Program.

Ms. Kaczkowski provided a maintenance timeline and described options including renourishment alone versus renourishment with groin restoration. Mr. Kana led the Board in dialogue about groins, including those in the Buxton area, and the benefits they provide. The Board engaged in discussion with the engineers about the feasibility of getting the necessary State and Federal authorizations to restore the existing Buxton groins. Mr. Clawson asked the Board to approve a Capital Project Ordinance for the \$19.7 million project and to authorize the County Manager to execute Amendment #2 with Coastal Science & Engineering for proposed Professional Services.

MOTION

Commissioner Couch motioned to adopt Capital Project Ordinance and authorize the County Manager to execute Amendment #2 with Coastal Science & Engineering for proposed Professional Services

Commissioner House seconded the motion.

VOTE: AYES unanimous

ITEM 8 – STATE CONTRACT FOR DREDGE VESSEL

The County Manager reviewed that at the previous meeting the Board of Commissioners approved documents related to the dredge vessel. He noted the agreement with the State of NC was still in the process of being finalized. Mr. Outten informed the Board that the revisions to the agreement have been made and now the final agreement with the State is ready for Board approval with authority provided to the County Manager to approve any minor changes from DEQ.

MOTION

Commissioner Tobin motioned to approve the final agreement and authorize the County Manager to make any minor changes that might be necessary and execute all related documents.

Commissioner House seconded the motion.

VOTE: AYES unanimous

ITEM 9 – PURCHASE OF PROPERTY AT 47013 BUXTON BACK ROAD, CAPITAL PROJECT ORDINANCE & REIMBURSEMENT RESOLUTION (Att. # 2)

A Purchase Agreement in the amount of \$320,000 for the acquisition of 47013 Buxton Back Road, Buxton, NC, which is adjacent to the County’s Transfer Station, was presented for approval. Mr. Outten outlined the building is in good condition and will provide much needed parking and meeting space for election and other activities. He added that the drafted agreement will be corrected and finalized to reflect the purchase is only for two parcels, as the County purchased one of the parcels earlier. Mr. Outten asked the Board to approve the agreement, acknowledging the change to be made to the legal description.

MOTION

Commissioner House motioned to approve the agreement and authorize the Manager to execute all necessary documents, adopt the related Capital Project Ordinance & Revised Reimbursement Resolution for Series 2019 Limited Obligation Bonds. The Board also authorized the Manager to make the necessary changes needed to the property description outlined in the Agreement.

Commissioner Couch seconded the motion.

VOTE: AYES unanimous

ITEM 10 - PUBLIC HEARING – MANAGER’S PROPOSED BUDGET (Att. # 3)

At 10:12 a.m. the Board held a Public Hearing to receive input concerning this agenda item. The Manager outlined the procedure for making public comments in Manteo and via the video link to the Fessenden Center Annex in Buxton. Mr. Outten provided the Board with a Budget Change List to the FY2020 Proposed Budget. No one responded to the invitation to address the Board. The County Manager closed the Public Hearing at 10:12 a.m.

MOTION

Vice Chairman Overman motioned to approve the Manager’s Proposed 2020 Fiscal Year Budget incorporating the changes that were outlined on the Budget Change List and to adopt the Annual Budget Ordinance.

Commissioner Tobin and Commissioner Ross seconded the motion.

VOTE: AYES unanimous

ITEM 11 – CONSENT AGENDA

The Manager announced the items as they were visually displayed in the meeting room.

MOTION

Commissioner Couch motioned to approve the Consent Agenda:

- 1) Approval of Minutes 05.20.19 (**Att. #4**)
- 2) Juvenile Crime Prevention Certification Standards & Funding Plan for 2019/2020
- 3) Water Tower Lease Rate Amendments

Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

ITEM 12 – BOARD APPOINTMENTS

1) Albemarle Region Resource Conservation & Development Council

Vice Chairman Overman motioned to reappoint Ann Sinclair.

Commissioner Ross seconded the motion.

VOTE: AYES unanimous

2) Dare County Waterways Commission

Commissioner House motioned to reappoint Michael Flynn, Dan Oden and Fletcher Willey.

Commissioner Tobin seconded the motion.

VOTE: AYES unanimous

3) Fessenden Center Advisory Board

Commissioner Couch motioned to appoint James Richard Kenner.

Commissioner House seconded the motion.

VOTE: AYES unanimous

4) Hatteras Community Center Board

Commissioner Bateman motioned to reappoint George Banks, Dennis Robinson and Ricki Shepherd.

Commissioner House seconded the motion.

VOTE: AYES unanimous

5) Juvenile Crime Prevention Council

Vice Chairman Overman motioned to reappoint Robert Trivette, Molly McGinnis, Vance Haskett, Gail Hutchison, Jennifer Karpowicz, Edward Hall, Jr., Keith Letchworth, Shelia Davies, Bonnie Bennett, Steve House, Pat Hudspeth, Richard J. Martin, Laura Twichell, Katherine Irby and Nancy Griffin; and to appoint Craig S. Albert; and to appoint Chelsea Artzt as Student Representative and Marcus Hester-Smith to fill the At Large Seat.

Commissioner Bateman seconded the motion.

VOTE: AYES unanimous

6) Land Transfer Tax Appeals Board

Commissioner Ross motioned to appoint Michael Siers and to reappoint Jack Overman and Michael Stone.

Commissioner Couch seconded the motion.

VOTE: AYES unanimous

7) Library Board - Dare

Vice Chairman Overman motioned to reappoint Lisa Phillips.

Commissioner House seconded the motion.

VOTE: AYES unanimous

8) Manns Harbor Community Center

Commissioner Tobin motioned to reappoint Bett Beasley and Vickie Craddock and appoint Jennifer Gilbert.

Vice Chairman Overman seconded the motion.

VOTE: AYES unanimous

9) Roanoke Island Community Center

Vice Chairman Overman motioned to reappoint Jonique Lee, Betty Selby, Allen Moran and Clarence Lewis.

Commissioner House seconded the motion.

VOTE: AYES unanimous

10) Rodanthe Waves Salvo Community Center Board

Commissioner Couch motioned to reappoint Joey O'Neal.

Commissioner House seconded the motion.

VOTE: AYES unanimous

11) Upcoming Board Appointments

The upcoming Board appointments for July, August and September were announced.

ITEM 13 – COMMISSIONERS' BUSINESS & MANAGER'S/ATTORNEY'S BUSINESS

Commissioners and the County Manager frequently make extensive remarks, which can be viewed in their entirety in a video on the Dare County website. Following is a brief summary outline of the items mentioned by Commissioners during this segment –

Commissioner Bateman

He attended a meeting with Senator Thom Tillis and discussed a partnership with Dare County and the possible building of a jetty. Senator Tillis indicated he would be happy to look into that subject.

Commissioner Couch

Gave a positive report on the new ferry which he noted was being utilized by many locals. He added the Massachusetts crew was congenial and the folks have embraced them.

Commissioner Tobin

- Thanked Kelli Harmon again for her service and recognized her as a good addition to Dare County.
- He was unable to join the meeting with Senator Tillis due to another commitment he had in Beaufort. His take away from the visit was Beaufort's restaurants and businesses were not busy, even during the Memorial Day weekend, unlike our area.

Commissioner Ross

- Reported that later today he would be at the new Family Health Center at MP2 on the bypass.
- He noted the anniversary of the moving of the Hatteras lighthouse will be July 1
- May 21 he attended the Interfaith Community Outreach luncheon and accepted on behalf of Dare County the 2018 Partnership Award for Dare County
- He will be attending the Veterans Advisory Council on June 27 and will update later
- This past Saturday he was at the Golf Drive for the Cure which was attended by woman golfers. Proceeds from this cancer fundraiser stay in Dare County.
- Dare EMS held an open house on May 23. We should be proud of what they continue to do for Dare County.

Commissioner House

He attended the Working Watermen’s Commission meeting and reviewed the Fishery Management Amendment #2 and reported the amendment would adversely and unfairly affect the local economies of North Carolina coastal communities. He asked the Board to adopt a resolution to oppose the amendment.

MOTION (Att. #5)

Commissioner House motioned to adopt a Resolution opposing further restrictions to the Southern Flounder Fishery Management Plan, Amendment 2

Commissioner Tobin seconded the motion.

VOTE: AYES unanimous

Vice Chairman Overman

He congratulated the service pin recipients and the Employee of the Month. He also commented on the successful launch of the passenger ferry between Hatteras and Ocracoke.

MANAGER’S/ATTORNEY’S BUSINESS – NONE

Dorothy Hester: She attended a meeting with Donna Creef regarding the upcoming Census and she will report further with recommendations as discussions continue.

At the conclusion of the meeting, Chairman Woodard asked for a motion to adjourn.

MOTION

Commissioner House motioned to adjourn the meeting.

Commissioner Tobin seconded the motion.

VOTE: AYES unanimous

At 12:01 p.m., the Board of Commissioners adjourned until 5:00 p.m., June 17, 2019.

Respectfully submitted,

[SEAL]

By: _____
Cheryl C. Anby, Clerk to the Board

APPROVED: By: _____
Robert Woodard, Chairman
Dare County Board of Commissioners

Note: copies of attachments (Att.), ordinances, resolutions, contracts, presentations, and supporting material considered by the Board of Commissioners at this meeting are on file in the office of the Clerk to the Board.



Public Works / Budget Amendment for Surplus Property Sold and Maintenance and Repair of Equipment

Description

The sale of a surplus excavator from the Landfill Dirt Pit resulted in additional revenue. This revenue will be transferred to the Maintenance and Repair line item for needed repairs on a John Deere dozier.

Board Action Requested

Approve Budget Amendment

Item Presenter

Shanna Fullmer / Public Works Director

DARE COUNTY

BUDGET AMENDMENT

F/Y 2018/2019

ACCOUNT	CODE			INCREASE	DECREASE
	Org	Object	Project		
<u>Department: Non-Departmental Revenues:</u>					
Sale of Surplus Property	103050	460200		15,000	
 <u>Expenditures:</u>					
Online Auction Fees	104490	511902		1,500	
Maintenance & Repair-Equipment	104735	511501		13,500	

Explanation:

The sale of a surplus excavator from the Dirt Pit Landfill resulted in additional revenue. This revenue will be used to pay for needed repairs to a John Deere dozer at the landfill. The selling price of the excavator was \$15,000, less the selling agent fee of \$1,500 (ten percent), which resulted in net revenue of \$13,500.

Approved by:

Board of Commissioners: _____

Date: _____

County Manager: _____

Date: _____

(sign in red)

Finance only:

Date entered: _____

Entered by: _____

Reference number: _____



*Dare County Department of Health and Human Services
Public Health Division
Veterans' Care Agreement*

Description

The Dare County Department of Health and Human Services, Public Health Division, has received a Veterans' Care Agreement from the VA. The Agreement needs to be executed in order that we can continue to provide home care services to veterans. The Agreement is for a period of three years and we would respectfully request that the Board of Commissioners approve the three year agreement.

Board Action Requested

Approve three year Agreement.

Item Presenter

N/A

A. GENERAL

This Veterans Care Agreement VCA1285630384 (Agreement) is entered into by and between the undersigned entity or provider (Provider) and the U.S. Department of Veterans Affairs (VA) (collectively, the Parties) in accordance with section 1703A of title 38, United States Code (U.S.C.) and 38 Code of Federal Regulations (CFR) §§ 17.4100-4135.

B. COVERED SERVICES

1. Provider shall furnish medically necessary hospital care, medical services, and/or extended care services that are authorized by VA in accordance with the terms of this Agreement (Covered Services).
2. This Agreement shall not cover emergency care that is not ancillary to authorized services. In no event shall such emergency care be deemed to have been authorized by VA under this Agreement.
3. Provider shall comply with VA National Formulary policy for prescriptions. Non-formulary medication may be prescribed only if the clinical justification is consistent with VA Non-Formulary policy. VA's Pharmacy Benefits Management Services website (<http://www.pbm.va.gov/nationalformulary.asp>) contains the VA National Formulary.

C. AUTHORIZATION OF COVERED SERVICES

1. All Covered Services provided under this Agreement must be authorized in advance by VA through a written or electronic authorization on applicable VA forms. Authorizations will be accompanied by, at a minimum, a consult, the available and relevant medical history of the VA beneficiary, and a list of all medications prescribed to the VA beneficiary as known by VA.
2. Authorizations and accompanying documentation will be issued to Provider by mail, secure fax, or secure email in accordance with Section O. Authorizations may be issued by VA at any time during the Term of this Agreement.
3. Authorizations must contain the Veterans Care Agreement number listed in Section A of this Agreement.
4. Authorizations are only valid for the specific service(s) identified in the authorization and accompanying consult. In the event of a conflict between the authorization and consult, the authorization controls. Standardized Episodes of Care (SEOCs) will be the method used to describe specific services authorized, to include CPT codes. If a SEOC is not available for the services being requested, the episode of care will be defined.
5. Authorizations are only valid for Covered Services performed within the dates specified in the authorization.
6. Provider, and any providers that perform services authorized under this Agreement, shall only furnish Covered Services authorized by VA in accordance with the terms of this Agreement. If Provider determines that additional hospital care, medical services, and/or extended care services are needed that are outside the scope of an existing authorization, Provider must contact VA to request written authorization to furnish such additional hospital care, medical services, and/or extended care services. Provider must receive written authorization from VA in accordance with § C.1, above, prior to furnishing any additional hospital care, medical services, and/or extended care services that are outside the scope of an existing authorization.

**DEPARTMENT OF VETERANS AFFAIRS
VETERANS HEALTH ADMINISTRATION (VHA)
VETERANS CARE AGREEMENT (Continued)**

7. Authorizations issued by VA under this Agreement, and any Covered Services furnished pursuant to such authorizations, are subject to the terms and conditions of this Agreement. In the event of a conflict between an authorization (or accompanying consult or other documentation) and this Agreement, this Agreement controls.

D. PROVIDER QUALIFICATIONS AND CONDITIONS FOR PROVISION OF COVERED SERVICES

1. Provider shall always be actively certified in accordance with 38 CFR § 17.4110. In no event shall Provider, or any other provider, furnish any services under this Agreement if Provider is not actively certified in accordance with that regulation.

2. Provider, and any providers that perform services authorized under this Agreement, shall have an Active NPI number. Provider shall have a Federal Tax ID number (TIN). Employer Identification Number (EIN) number can be obtained in lieu of a TIN, as applicable. NPI numbers and Provider's Tax ID number shall be provided to VA within 10 business days of request.

3. Provider, and any providers that perform services authorized under this Agreement, shall always be authorized to perform such services in the jurisdiction where such services are delivered, including possessing, if required, a full, active, and unrestricted license in the state or other jurisdiction in which the services are being delivered. Provider shall provide VA with current copies of applicable medical licenses within 10 business days of request.

4. Provider, and any providers that perform services authorized under this Agreement, shall always possess and maintain medical malpractice insurance in an amount in accordance with the laws of the state and locality in which the services are delivered. Such insurance must cover acts and omissions that occur during performance of services authorized under this Agreement. Provider shall provide VA with current copies of applicable medical malpractice insurance coverage within 10 business days of request.

5. Provider certifies that neither it nor any provider performing services authorized under this Agreement has ever experienced a loss of or adverse impact to a certification, credential, privilege, or license. In no event shall any services authorized under this Agreement be furnished by any provider, including Provider, that has ever experienced a loss of or adverse impact to a certification, credential, privilege, or license. Provider shall report in writing, as soon as possible, but not later than fifteen (15) business days after Provider is notified, the loss of or other adverse impact to the certification, credentialing, privileging, or licensing of Provider or any provider authorized by VA, in accordance with Section E, to perform services authorized under this Agreement. Adverse impact shall include, but is not limited to: any action taken to investigate, restrict, suspend or revoke a provider's license or certification to provide hospital care, medical care, or extended care services. VA reserves the right to take action if it becomes aware of an alleged egregious act(s) or a provider's license is under investigation for an alleged egregious act(s) that would place a veteran at risk if seen by that provider.

6. Services authorized under this Agreement shall never be performed by any individual or entity currently excluded from participation in a federal health care program under section 1128 or section 1128A of the Social Security Act (42 U.S.C. §§ 1320a-7 or 1320a-7a) and included on the List of Excluded Individuals/Entities (LEIE) maintained by the U.S. Department of Health and Human Services' Office of Inspector General. Provider shall notify VA within 5 business days of being excluded from participation in a federal health care program under section 1128 or section 1128A of the Social Security Act (42 U.S.C. §§ 1320a-7 or 1320a-7a) or being included on the LEIE.

**DEPARTMENT OF VETERANS AFFAIRS
VETERANS HEALTH ADMINISTRATION (VHA)
VETERANS CARE AGREEMENT (Continued)**

7. Services authorized under this Agreement shall never be performed by any individual or entity currently identified as an excluded source in the System for Award Management (SAM) database maintained by the U.S. General Services Administration. Such status is denoted by the existence of an "exclusion" record in SAM. Provider shall notify VA within 5 business days of being identified as an excluded source in SAM.

8. Provider, and any providers that perform services authorized under this Agreement, shall always meet and comply with all applicable state and federal laws regarding the prescription of controlled substances.

9. Provider, and any providers that perform services authorized under this Agreement, shall receive and review the evidence-based guidelines for prescribing opioids established by the Opioid Safety Initiative of the Department of Veterans Affairs. By providing Covered Services under this Agreement, Provider certifies that Provider and any providers that perform services authorized under this Agreement have received and reviewed those guidelines prior to performing any such services. Provider, and any providers that prescribe opioids under this Agreement, shall complete VA's online Community Care Provider Opioid Safety Initiative training course prior to performing any services authorized under this Agreement, except that this requirement does not apply during the first 180 calendar days after the Effective Date or to a provider furnishing an episode of care that was authorized prior to the 180th calendar day after the Effective Date. If VA determines, in its sole discretion and for any reason, that the opioid prescribing practices of any provider conflict with or are otherwise inconsistent with the standards of appropriate and safe care, or may place veterans at risk, VA may prohibit Provider from using such provider to perform services authorized under this Agreement. VA will provide written notice of any such determinations to Provider.

10. Provider, and any providers with an NPI that perform services authorized under this Agreement, shall always meet and comply with all general competency standards and requirements established by VA, except that this requirement does not apply during the first 180 calendar days after the Effective Date or to a provider furnishing an episode of care that was authorized prior to the 180th calendar day after the Effective Date. Provider can request VA's general competency standards and requirements at any time. Provider, and any providers with an NPI that perform services authorized under this Agreement, shall complete VA's online General Competency training course prior to performing any services authorized under this Agreement, except that this requirement does not apply during the first 180 calendar days after the Effective Date or to a provider furnishing an episode of care that was authorized prior to the 180th calendar day after the Effective Date.

11. Except as otherwise provided in this paragraph, Provider, and providers that perform services authorized under this Agreement, shall always meet and comply with all applicable competency standards and requirements established by VA for specialized clinical areas, including but not limited to post-traumatic stress disorder (PTSD), military sexual trauma (MST), and traumatic brain injury (TBI), when performing services authorized under this Agreement in those respective clinical areas. Provider can request VA's applicable competency standards and requirements at any time. Except as otherwise provided in this paragraph, Provider, and providers that perform services authorized under this Agreement in specialized clinical modalities, including but not limited to PTSD, MST, and/or TBI, shall complete any applicable VA online training course for each respective clinical area prior to performing any services authorized under this Agreement in such clinical areas. The requirements of this paragraph do not apply during the first 180 calendar days after the Effective Date or to a provider furnishing an episode of care that was authorized prior to the 180th calendar day after the Effective Date.

**DEPARTMENT OF VETERANS AFFAIRS
VETERANS HEALTH ADMINISTRATION (VHA)
VETERANS CARE AGREEMENT (Continued)**

E. VA CREDENTIALING, APPROVAL, AND DISAPPROVAL OF PROVIDERS

1. Provider must always provide VA with written notice identifying any providers that may perform services authorized under this Agreement at least 10 business days before any such provider performs any such services. Written notice must contain all applicable providers' names, NPIs, and any other pertinent information requested by VA. In no event shall any service authorized under this Agreement be performed by any provider about whom VA has not received advance written notice in accordance with the terms of this Agreement.
2. VA will conduct credentialing of Provider, if applicable, and all providers identified by Provider under § E.1 that may perform services authorized under this Agreement. VA's credentialing will be in accordance with standards and processes determined by VA. Except as otherwise provided in this paragraph, Provider, if applicable, and any provider that performs services authorized under this Agreement shall always be actively credentialed by VA, and Provider must receive written notice from VA that a provider is credentialed prior to permitting such provider to perform any such services. VA will provide written notice of all providers identified under § E.1, above, that are credentialed by VA. VA may suspend credentialing requirements at any time by written notice to Provider. When credentialing requirements are suspended, providers do not need to be actively credentialed by VA to perform services authorized under this Agreement, but must be approved in accordance with § E.3. Any suspension of credentialing requirements will be indefinite, until the suspension is revoked by written notice from VA. Any such revocation will not apply to episodes of care in progress at the time of revocation.
3. When credentialing requirements are suspended, Provider, if applicable, and all providers that may perform services authorized under this Agreement shall always be approved by VA prior to performing any such services. Provider must receive written notice from VA that a provider is approved prior to permitting such provider to perform any such services.
4. VA reserves the right to unilaterally prohibit Provider from permitting any specific provider to perform services authorized under this Agreement. VA is not obligated to provide any reason for prohibiting a specific provider from performing services under this Agreement. VA will provide written notice of any such prohibition to Provider. In no event shall Provider permit a provider to perform services authorized under this Agreement if VA has provided written notice to Provider that such provider is prohibited from performing such services.

F. QUALITY STANDARDS AND MONITORING

Provider, and any providers that perform services authorized under this Agreement, shall always meet and comply with all applicable VA quality standards and requirements. Such standards include, but are not limited to, those pertaining to timely care, effective care, safe care, and Veteran-centered care. Provider can request VA's quality standards and requirements at any time. Provider must always monitor compliance of all services authorized under this Agreement with all applicable VA quality standards and requirements. Provider shall always provide VA with documentation of the results of such monitoring within 10 business days of request.

G. INSPECTION OF SERVICES

1. Provider shall only tender for acceptance of those services that conform to the requirements of this Agreement. Provider shall provide and maintain an inspection system sufficient to determine and document the conformance of all services provided under this Agreement with all requirements of this Agreement. Complete records of all inspection work performed by Provider shall be maintained and made available to VA during the Term of this Agreement and for one (1) year thereafter.

**DEPARTMENT OF VETERANS AFFAIRS
VETERANS HEALTH ADMINISTRATION (VHA)
VETERANS CARE AGREEMENT (Continued)**

2. VA reserves the right to inspect and test any services authorized and performed under this Agreement, to the extent practicable at all times and places during the Term of the Agreement, including through announced or unannounced site visits to the premises of Provider or any entity or provider involved in performing services authorized under this Agreement. VA shall perform inspections and tests in a manner that will not unduly delay the work.
3. If VA performs inspections or tests on the premises of Provider, or any entity or provider involved in performing services authorized under this Agreement, Provider shall furnish, and shall require any such entity or Provider to furnish, at no increase in price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
4. If any of the services authorized and performed under this Agreement do not conform with requirements of this Agreement, VA may require Provider to perform the services again in conformity with the requirements of this Agreement, at no increase in price. When the defects in services cannot be corrected by reperformance, VA may:
 - (a) Require Provider to take necessary action to ensure that future performance conforms to requirements of this Agreement; and
 - (b) Reduce the Agreement price to reflect the reduced value of the services performed.
5. If Provider fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with the requirements of this Agreement, VA may:
 - (a) By separate contract or agreement, or otherwise, perform the services and charge to Provider any cost incurred by VA that is directly related to the performance of such services; or
 - (b) Discontinue the Agreement.

H. MEDICAL RECORDS

1. Provider shall always provide VA with copies of all medical documentation from any Covered Services performed under this Agreement.
2. Initial medical documentation for outpatient care must always be returned within thirty (30) calendar days of the initial appointment. Final outpatient medical documentation must always be returned within thirty (30) calendar days of the completion of the Standard Episode of Care. Medical documentation must always be returned within thirty (30) days from the date of discharge for inpatient care. Any medical documentation requested by VA for appropriate urgent follow up must always be provided to VA upon request. Initial medical documentation is medical documentation associated with the first appointment of a Standard Episode of Care. Final medical documentation is medical documentation that covers the entire Standard Episode of Care.
3. Provider must always submit all medical documentation directly to the VA facility that issued the authorization, via secure electronic submission, where available. Permissible secure electronic submission methods include Health Information Exchange (HIE), HealthShare Referral Manager (HSRM) when available, encrypted email (Virtru Pro), or community viewer. If none of these options are available, Provider must always submit all medical documentation to the mailing address or fax number listed on the authorization.

**DEPARTMENT OF VETERANS AFFAIRS
VETERANS HEALTH ADMINISTRATION (VHA)
VETERANS CARE AGREEMENT (Continued)**

4. Medical documentation must always be submitted in a legible format and include, at a minimum, the following data elements as applicable to the clinical condition(s) to which the medical documentation relates:
- (a) Encounter notes, to include any procedures performed and recommendations for further testing or follow-up (e.g., discharge summary for inpatient). In lieu of encounter notes, a clinical summary may be provided for ancillary services when appropriate (e.g., physical therapy, occupational therapy, speech and language pathology, and nutrition services).
 - (b) Results of community testing or imaging such as MRI or CT scan (images must always be provided to VA upon request).
 - (c) Actual results of any ancillary studies/procedures that would impact recommended follow up such as biopsy results (e.g., biopsy results from the provider who recommends a follow up, such as surgery).
 - (d) Any recommended prescriptions, medical devices, supplies or equipment, and treatment plans.
 - (e) Other medical documentation based on clinical need.
5. Provider must always ensure that all medical documentation includes the following data when sent to VA:
- (a) VA beneficiary's Unique Identifier
 - (b) VA beneficiary's full name (including suffix)
 - (c) VA beneficiary's date of birth
 - (d) Referral number
 - (e) Provider/Practitioner Authentication (including typed name and provider phone number)
6. All documents must always be authenticated by the submitting provider. Authentication consists of a written signature, written initials, and/or electronic signatures.

I. PRICES/RATES

VA shall pay, and Provider shall accept, the following amounts as payment for services under this Agreement:

1. Covered Services furnished in Alaska for which a VA Alaska Fee Schedule code and amount exist: The lesser of billed charges or the VA Alaska Fee Schedule amount.

The VA Alaska Fee Schedule only applies to physician and non-physician professional services. The schedule uses the Health Insurance Portability and Accountability Act mandated national standard coding sets.

2. Covered Services not within the scope of § I.1, above, and for which an applicable Medicare fee schedule or prospective payment system amount exists for the period in which the service was provided (without any changes based on the subsequent development of information under Medicare authorities) (hereafter "Medicare rate"): The lesser of billed charges or the applicable Medicare rate, subject to the following:

- (I) For Covered Services that are furnished in a highly rural area (defined as an area located in a county that has fewer than seven individuals residing in that county per square mile), VA will pay the lesser of billed charges or the amount otherwise agreed to, not to exceed 130% of the applicable Medicare rate.

3. Covered Services not within the scope of § I.1, above, furnished by a facility currently designated as a Critical Access Hospital (CAH) by CMS, and for which a specific amount is determinable under the following methodology: The lesser of billed charges or the applicable CAH rate verified by VA. Data requested by VA to support the applicable CAH rate shall be provided upon request. Billed charges are not relevant for purposes of determining whether a specific amount is determinable under the above methodology.

**DEPARTMENT OF VETERANS AFFAIRS
VETERANS HEALTH ADMINISTRATION (VHA)
VETERANS CARE AGREEMENT (Continued)**

4. Covered Services not within the scope of §§ 1.1-1.3, above, and for which there exists a VA Fee Schedule amount for the period in which the service was performed: The lesser of billed charges or the VA Fee Schedule amount for the period in which the service was performed, as posted on VA.gov.
5. Covered Services not within the scope of §§ 1.1-1.4, above: Billed charges.
6. Notwithstanding §§ 1.1-1.5, above, VA shall pay the following amount for Covered Services that are dental services and for which there exists a VA-determined dental rate for the period in which the service was performed: The lesser of billed charges or the VA-determined dental rate. For purposes of this paragraph, the "VA-determined dental rate" is an amount unilaterally determined by VA.

J. CLAIMS SUBMISSION AND ADJUDICATION

1. Provider shall always submit all claims within 180 days of the date of service. Claims must be submitted to the VA facility that issued the authorization. Electronic claims must be submitted by Electronic Data Exchange (EDI) using the following payer IDs: 1) 12115 for medical claims, and 2) 12116 for dental claims. Paper claims must be submitted in accordance with the instructions on the community care website on VA.gov.
2. Provider shall always submit clean claims. VA will only process and pay clean claims. A "clean claim" means a claim that contains all of the required data elements necessary for accurate adjudication, without obtaining additional information from the submitter, and which complies with all applicable VA requirements regarding information, documentation, and format, including the following specific requirements:
 - (a) Containing Provider's name, address, and Taxpayer Identification Number (TIN).
 - (b) Containing the correct VA beneficiary identifiers, including Social Security Number.
 - (c) Containing the numbers of this Agreement and the applicable VA authorization(s).
 - (d) Applying industry standard edits consistent with the current version of the CMS National Correct Coding Initiative (NCCI) Coding Policy Manual.
 - (e) For institutional paper claims, complying with all content requirements set forth in the current version of the National Uniform Billing Committee (NUBC) Official UB-04 Data Specifications Manual.
 - (f) For professional paper claims, complying with all content requirements set forth in the current version of the National Uniform Claim Committee (UCC) 1500 Claim Form Reference Instruction Manual.
 - (g) For electronic claims, complying with all content requirements set forth in the current version of the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12 Health Care Claim (837) transaction Type 3 Technical Reports-TR3.
 - (h) Home Health services must be billed in accordance with all applicable requirements and standards of CMS' prospective payment system for Medicare home health services.
3. If a claim is denied, VA will notify Provider in writing of the reason for denying the claim and what, if any, additional information is required to process the claim. VA will provide such notification within 45 calendar days of receipt of a paper claim and within 30 calendar days of receipt of an electronic claim. Provider must submit all additional information requested by VA within 30 calendar days of receipt of VA's notice of denial. Such information must be submitted to the VA facility that issued the authorization, in accordance with the requirements of this section. VA will pay, deny, or otherwise adjudicate the claim within 30 calendar days of receipt of the requested information.

**DEPARTMENT OF VETERANS AFFAIRS
VETERANS HEALTH ADMINISTRATION (VHA)
VETERANS CARE AGREEMENT (Continued)**

K. PAYMENT

1. VA shall pay Provider, upon submission of clean claims, the amounts set forth in Section I of this Agreement for Covered Services furnished and accepted. Payment will be made within 30 calendar days of receipt of a clean electronic claim and within 45 calendar days of receipt of clean paper claim.
2. Payment by Electronic Funds Transfer
 - (a) Method of payment.
 - (1) All payments by VA under this Agreement shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
 - (2) In the event VA is unable to release one or more payments by EFT, Provider agrees to either--
 - (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request VA to extend payment due dates until such time as VA makes payment by EFT (but see paragraph (d) of this clause).
 - (b) Mandatory submission of Provider's EFT information. Provider is required to provide the Government with the information required to make payment by EFT (see paragraph (j) of this clause). Provider shall provide this information directly to the office designated in this contract to receive that information (the Designated Office') by no later than 10 business days prior to submission of the first claim. If not otherwise specified in this Agreement, the payment office is the Designated Office for receipt of the Provider's EFT information. If more than one Designated Office is named for the Agreement, Provider shall provide a separate notice to each office. In the event that the EFT information changes, Provider shall be responsible for providing the updated information to the Designated Office(s).
 - (c) Mechanisms for EFT payment. VA may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.
 - (d) Suspension of payment.
 - (1) VA is not required to make any payment under this Agreement until after receipt, by the Designated Office, of the correct EFT payment information from Provider. Until receipt of the correct EFT information, any claim shall be deemed not to have been received by VA for purposes of determining payment due date.
 - (2) If the EFT information changes after submission of correct EFT information, VA shall begin using the changed EFT information no later than 30 calendar days after its receipt by the Designated Office to the extent payment is made by EFT. However, Provider may request that no further payments be made until the updated EFT information is implemented by the payment office.
 - (e) Liability for uncompleted or erroneous transfers.
 - (1) If an uncompleted or erroneous transfer occurs because VA used the Contractor's EFT information incorrectly, VA remains responsible for--(i) making a correct payment; and (iii) recovering any erroneously directed funds.

**DEPARTMENT OF VETERANS AFFAIRS
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(2) If an uncompleted or erroneous transfer occurs because Provider's EFT information was incorrect, or was revised within 30 days of VA release of the EFT payment transaction instruction to the Federal Reserve System, and--

- (i) If the funds are no longer under the control of the payment office, VA is deemed to have made payment and Provider is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, VA shall not make payment and the provisions of paragraph (d) shall apply.

(f) EFT and timing of payment. A payment shall be deemed to have been made in a timely manner in accordance with the terms of this Agreement if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) EFT and assignment of claims. If Provider assigns the proceeds of this Agreement as provided for in the assignment of claims terms of this Agreement, Provider shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the Designated Office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were Provider. EFT information that shows the ultimate recipient of the transfer to be other than Provider, in the absence of a proper assignment of claims acceptable to VA, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) Liability for change of EFT information by financial agent. VA is not liable for errors resulting from changes to EFT information provided by Provider's financial agent.

(i) Payment information. The payment or disbursing office shall forward to Provider available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. VA may request Provider to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, VA does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to VA. If VA makes payment by check in accordance with paragraph (a) of this clause, VA shall mail the payment information to the remittance address in this Agreement.

(j) EFT information. Provider shall provide the following information to the Designated Office. Provider shall designate a single financial agent capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

- (1) The Agreement number.
- (2) Provider's name and remittance address, as stated in the Agreement.
- (3) The signature (manual or electronic, as appropriate), title, and telephone number of the Provider official authorized to provide this information.
- (4) The name, address, and 9-digit Routing Transit Number of Provider's financial agent.
- (5) Provider's account number and the type of account (checking, saving, or lockbox).
- (6) If applicable, the Fedwire Transfer System telegraphic abbreviation of Provider's financial agent.
- (7) If applicable, Provider shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if Provider's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

**DEPARTMENT OF VETERANS AFFAIRS
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VETERANS CARE AGREEMENT (Continued)**

(k) Vendorization. Prior to submitting a claim, Provider must ensure the authorizing VA facility has received a completed FMS Vendor File Request form (VA Form 10091) and W-9, Request for Taxpayer Identification Number and Certification and all information contained therein is current and accurate.

3. Prompt Payment by VA.

(a) Interest penalty. The designated payment office will pay an interest penalty automatically, without request from Provider, if payment is not made by the due date and the conditions listed in paragraphs (a)(1) and (a)(2) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(1) VA received a clean claim in accordance with Section J.

(2) VA processed a receiving report or other VA documentation authorizing payment, and there was no disagreement over payment amount, compliance of services furnished with any term or condition of this Agreement, or Provider compliance with any other term or condition of this Agreement.

(b) Computing penalty amount. The interest penalty shall be computed at the rate of interest established by the Secretary of the Treasury under section 3902 of title 31, USC, and published in the Federal Register.

4. Overpayments.

(a) If Provider becomes aware of a duplicate VA payment or that VA has otherwise overpaid under the Agreement, Provider shall—

(i) Remit the overpayment amount to the payment office cited in the Agreement along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, date(s) of overpayment);

(B) Agreement number, and number(s) of affected authorization(s) and claim(s); and

(C) Provider point of contact.

(b) VA may deduct the amount of any overpayment from payments due Provider, in accordance with 38 U.S.C. § 1703D(e).

5. Interest from Provider.

(a) All amounts that become payable by Provider to VA under this Agreement shall bear simple interest from the date due until paid unless paid within 30 calendar days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (c) of this clause, and then at the rate applicable for each six-month period at fixed by the Secretary until the amount is paid.

(b) VA may issue a demand for payment to the Contractor upon finding a debt is due under the Agreement.

(c) Amounts shall be due on the date of the first written demand for payment.

(d) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(i) The date on which the designated office receives payment from Provider;

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- (ii) The date of issuance of a VA check to Provider from which an amount otherwise payable has been withheld as a credit against the contract debt; or
- (iii) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to Provider.

6. The payment office for this Agreement is: the applicable VA office, unless otherwise identified by VA.

L. PAYMENT RESPONSIBILITY

1. Provider agrees that payment by VA under this Agreement shall, unless rejected and refunded by Provider within 30 calendar days of receipt, constitute payment in full and extinguish any liability on the part of the VA beneficiary for the treatment or care provided. No provision of any contract, agreement, or assignment to the contrary shall operate to modify, limit, or negate this requirement.
2. VA is solely responsible for payment for all Covered Services provided under this Agreement. Provider shall not seek to recover or collect from any party, other than the VA, any payment or fee arising from Covered Services authorized and provided under to this Agreement, including any missed appointment fees or charges.
3. Provider shall not collect any cost share or copayment amount from any VA beneficiary for Covered Services provided under this Agreement.
4. Provider agrees that it shall not seek to recover or collect from a health-plan contract or third party, as those terms are defined at 38 U.S.C § 1729, for any Covered Services provided under this Agreement and paid for by VA.

M. DISCONTINUATION

1. Provider may discontinue this Agreement by providing written notice of discontinuation to the designated VA official set forth in the notice provision of this Agreement. Written notice must be received by VA at least 45 calendar days before the discontinuation date and must specify the discontinuation date. In no event shall discontinuation be effective fewer than 45 calendar days after VA receives such notice. Unless the Parties agree otherwise in writing, Provider shall complete any episode(s) of care authorized under this Agreement that are in progress on the effective date of discontinuation.
2. VA may discontinue this Agreement for the reasons set forth in paragraph (a) of this clause. VA notice of discontinuation will comply with the requirements set forth in paragraph (b) of this clause.

(a) VA may discontinue this Agreement for any of the following reasons:

- (i) If VA determines Provider failed to comply substantially with any of the provisions of 38 U.S.C. 1703A or 38 CFR §§ 17.4100-17.4135, including but not limited to the requirement to maintain active certification under 38 CFR § 17.4110 and the requirement to comply with all Standards and Requirements for Entities or Providers that Enter Into Veterans Care Agreements set forth at 38 CFR § 17.4115(b)(2);
- (ii) If VA determines Provider failed to comply substantially with any of the provisions, terms, or conditions of this Agreement, including but not limited to any of the requirements and conditions set forth in Section D (Provider Qualifications and Conditions for Provision of Covered Services), Section E (VA Credentialing, Approval, and Disapproval of Providers), and Section F (Quality Standards and Monitoring).

**DEPARTMENT OF VETERANS AFFAIRS
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(iii) If VA determines Provider is excluded from participation in a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a-7b(f)) under section 1128 or 1128A of such Act (42 U.S.C. 1320a-7 and 1320a-7a), or is identified as an excluded source on the System for Award Management Exclusions list described in part 9 of title 48, Code of Federal Regulations, and part 180 of title 2 of such Code, or successor regulations;

(iv) If VA ascertains that Provider has been convicted of a felony or other serious offense under federal or state law and determines that discontinuation of the Agreement would be in the best interest of a VA beneficiary or VA; or

(v) If VA determines it is reasonable to discontinue the Agreement based on the health care needs of a VA beneficiary.

(b) VA will provide written notice of discontinuation to Provider in accordance with the notice provision of this Agreement and within the following timeframes:

(i) Written notice of discontinuation will be issued at least 45 calendar days before the discontinuation date, except as provided in subparagraph (ii).

(ii) Notice may be issued fewer than 45 calendar days before the discontinuation date, including notice that is effective immediately upon issuance, when VA determines such abbreviated or immediate notice is necessary to protect the health of VA beneficiaries.

(c) Unless otherwise directed by VA in writing, Provider shall complete any episode(s) of care authorized under this Agreement that are in progress on the effective date of discontinuation. If VA's written notice of discontinuation sets forth any limitations on Provider furnishing previously-authorized services after the discontinuation date or any other specified date (including immediately upon issuance of such notification), Provider shall comply with those limitations.

3. Upon discontinuation by either Party, Provider shall provide VA with a list of all pending VA beneficiary appointments and shall provide all medical records in accordance with Section H of this Agreement.

N. DISPUTES

1. All disputes arising under or related to this Agreement are subject to 38 U.S.C. § 1703A(h) and 38 CFR § 17.4135. 38 CFR § 17.4135 establishes the administrative procedures and requirements for asserting and resolving all such disputes.

2. For purposes of this clause, a dispute means a disagreement, between VA and Provider, that meets the following criteria:

(a) Pertains to either—(1) claims for payment under this Agreement; or (2) the scope of one or more specific authorizations under this Agreement.

(b) Is not resolved informally by mutual agreement of the parties; and

(c) Culminates in one of the parties demanding or asserting, as a matter of right, the payment of money in a sum certain under the Agreement, the interpretation of the terms of the Agreement or a specific authorization thereunder, or other relief arising under or relating to the Agreement. However, a dispute does not encompass any demand or assertion, as a matter of right, for penalties or forfeitures prescribed by a statute or regulation that another federal agency is specifically authorized to administer, settle, or determine.

3. The procedures established in this clause and § 17.4135 should only be used when the Parties have failed to resolve an issue in controversy by mutual agreement.

**DEPARTMENT OF VETERANS AFFAIRS
VETERANS HEALTH ADMINISTRATION (VHA)
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4. Disputes must be initiated by submitting a notice of dispute, in writing, to the designated VA official for receipt of disputes in accordance with Section O. The notice of dispute must contain all specific assertions or demands, all facts pertinent to the dispute, any specific resolutions or relief sought, and all information and documentation necessary to review and adjudicate the dispute.

5. The notice of dispute must be received by the designated VA official for receipt of disputes, in accordance with the terms of this Agreement, within 90 calendar days after the accrual of the dispute. For purposes of this clause, the "accrual of the dispute" is the date when all events, that fix the alleged liability of either VA or Provider and permit the applicable demand(s) and assertion(s), were known or should have been known. The term "accrual of the dispute," as defined, has the following meanings in each of the two specific circumstances that follow:

(a) When a dispute consists of Provider asserting that VA has made payment in an incorrect amount, under circumstances where VA has issued a corresponding payment notice and Provider has received such notice, the accrual of the dispute is the date such notice was received by Provider.

(b) When a dispute consists of Provider asserting that VA has improperly denied payment to which it is entitled, under circumstances where VA has issued a corresponding denial of payment notice and Provider has received such notice, the accrual of the dispute is the date such notice was received by Provider.

O. NOTICE

Except as otherwise provided in this Agreement, any notice required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be sent by mail or email to the individuals designated at the addresses listed below, or to such other person or entity as either Party shall designate by written notice to the other in accordance herewith:

U.S. Department of Veterans Affairs (OCC to add all applicable VA POCs, mailing addresses, and email addresses)

Hampton VA Medical Center - Office of Community Care (OCC)
100 Emancipation Drive, Hampton, VA 23667
Phone: 757-722-9961, ext. 4900
OCC Business Manager, 757-722-9961, ext. 3682
Chief, OCC, 757-722-9961, ext. 7781

Designated VA official for receipt of notice of disputes pertaining to claims for payment: Director, VHA Office of Community Care (OCC), Claims Adjudication and Reimbursement (CAR) (add mailing/email addresses for receipt of notices of dispute)

Salem VA Medical Center
POM Payment Operations and Management
1988 Roanoke Blvd, Salem, VA 24153
540-982-2463, option 5, then option 1

Designated VA official for receipt of notice of disputes pertaining to the scope of authorizations: As identified in the authorization.

Provider (Parties to fill in all applicable Provider POCs, mailing addresses, and emails)

Hampton VA Medical Center - Office of Community Care (OCC)
100 Emancipation Drive, Hampton, VA 23667 Phone: 757-722-9961, ext. 4900
OCC Leads: 757-722-9961, ext. 4169/4748
OCC Supervisors: 757-722-9961, ext. 7728/7730
OCC Business Manager: 757-722-9961, ext. 3682

**DEPARTMENT OF VETERANS AFFAIRS
VETERANS HEALTH ADMINISTRATION (VHA)
VETERANS CARE AGREEMENT (Continued)**

P. TERM

The term of this Agreement is three (3) years, beginning on the Effective Date.

Q. FEDERAL LAW APPLICABLE

This Agreement shall be governed, construed, and enforced in accordance with Federal law. VA is subject to the Laws and Regulations of the U.S. Code and Code of Federal Regulations, which shall take precedence over this Agreement if there is a conflict between this Agreement and those Federal Laws and Regulations. This agreement is governed by chapter 17 of title 38, U.S.C., the VA MISSION Act of 2018 (Public Law 115-182), and 38 C.F.R. §§ 17.4100-4135.

R. RELATIONSHIP OF THE PARTIES

The Parties to this Agreement are independent contractors. Nothing in this Agreement shall be construed as, or be deemed to create between the Parties hereto, a relationship of employee or employer, principal or agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement.

S. WARRANTY OF COMPLIANCE

Provider warrants it will operate in compliance with all applicable Federal laws and regulations.

T. PRIVACY ACT STATEMENT

1. To the extent any of the information that VA has a right to request from Provider or that Provider is otherwise required to provide VA under the terms of this Agreement constitutes "information" within the meaning of 5 USC 552a(e), and without prejudice to any other terms of this Agreement or the rights or obligations of the Parties under those terms, the following Privacy Act Statement applies.

2. VA's authority to solicit such information is 38 USC 1703A. VA's principal intended purposes for collecting such information is to use such information to establish, determine, and monitor eligibility of non-VA health care providers to furnish health care services authorized under chapter 17 of title 38, USC, as well as all uses arising under or related to the Agreement, including the exercise of any rights and discharge of any obligations thereunder. Other uses of this information include, but are not limited to, reporting healthcare provider earnings to the Internal Revenue Service; Third Party Liability, preparing responses to inquiries; performing statistical analyses for use in managerial activities, resource allocation and planning; processing and adjudicating administrative benefit claims by VBA Regional Office (RO) staff; conducting audits, reviews and investigations by staff of the VA healthcare facility, Veterans Integrated Service Network (VISN) Offices, VAFSC, VA Headquarters, and the VA Office of Inspector General (OIG); in the conduct of law enforcement investigations; and in the performance of quality assurance audits, reviews and investigations.

3. Information will be maintained in the System of Records described in System of Record Notice, 23VA10NB3, entitled "Non-VA Care (Fee) Records-VA", published at 80 FR 45590 (July 30, 2015). VA may disclose such information for routine uses 2, 7, and 30, described below and as otherwise noted in the referenced System of Records Notice. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

**DEPARTMENT OF VETERANS AFFAIRS
VETERANS HEALTH ADMINISTRATION (VHA)
VETERANS CARE AGREEMENT (Continued)**

(a) A record from this system of records may be disclosed to a Federal, State, or local government agency, maintaining civil, criminal, or other relevant information, such as current licenses, registration or certification, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the use of an individual as a consultant, attending or to provide Non-VA Care (fee), the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other health, educational or welfare benefits. Any information in this system also may be disclosed to any of the above-listed governmental organizations as part of a series of ongoing computer matches to determine if VA healthcare practitioners and private practitioners used by the VA hold current, unrestricted licenses, or are currently registered in a State, and are board certified in their specialty, if any.

(b) Records from this system of records may be disclosed to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the agency to obtain information relevant to an agency decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate non-government entities about the healthcare practices of a terminated, resigned or retired healthcare employee whose professional healthcare activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

4. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud, waste or abuse by individuals in their operations and programs.

5. Provider should be aware that the Computer Matching and Privacy Protection Act of 1988 (P.L. 100-503) amended the Privacy Act, 5 U.S.C. § 552a, to permit the government to verify information through computer matching. All provisions of this Privacy Act statement apply to Provider, all providers that perform services authorized under this Agreement, and all providers identified in accordance with subsection E.1 of this Agreement.

U. ASSIGNMENT

Provider may assign its rights to receive payment due as a result of performance of this Agreement to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. § 3727).

V. FORCE MAJEURE

Neither Party shall be deemed to breach its obligations under this Agreement if that Party's nonperformance is caused by an occurrence beyond the reasonable control of the Party and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Party invoking this clause shall notify the other Party in writing as soon as reasonably possible after the commencement of any excusable breach (setting forth the full particulars in connection therewith), shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the other Party of the cessation of such occurrence.

**DEPARTMENT OF VETERANS AFFAIRS
VETERANS HEALTH ADMINISTRATION (VHA)
VETERANS CARE AGREEMENT (Continued)**

W. WAIVER

Waiver, whether expressed or implied, of any breach of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach of the same provision.

X. AMENDMENT

This Agreement may be amended only by mutual written consent of authorized representatives of the Parties, except as otherwise expressly provided herein.

Y. SEVERABILITY

If any part of this Agreement should be determined to be invalid, unenforceable, or contrary to law or professional ethics, that part shall be reformed, if possible, to conform to law and ethics, and if reformation is not possible, that part shall be deleted, and the other parts of this Agreement shall remain fully effective.

Z. ENTIRE AGREEMENT

This Agreement, including the authorizations issued hereunder, constitutes the entire agreement between the Parties and, as of the Effective Date hereof, supersedes all other agreements and understandings between the Parties with respect to the subject matter hereof.

AA. VETERANS CARE AGREEMENT SIGNATURE

1. By the signatures of their authorized representatives below, this Agreement is made and entered into between Provider and VA, effective upon the date of last signature below (Effective Date).
2. By the signature below, Provider acknowledges that any materially false, fictitious, or fraudulent statement or representation, made knowingly, is punishable by a fine and/or imprisonment pursuant to 18 U.S.C. §§ 287 and 1001.
3. The Parties acknowledge that they have read and understand this Agreement in its entirety and represent and warrant that they shall abide by all of its terms and conditions.

Name of Provider

Department of Veterans Affairs

Title of Authorized Representative of Provider

Title

Print Name of Authorized Representative of Provider

Print Name of VA Medical Facility Director or Designee

Signature of Authorized Representative of Provider

Signature of VA Medical Facility Director or Designee

Date Signed

Date Signed



Tax Collector's Report

Description

May 2019 Releases over \$100
May 2019 NCVTS Refunds over \$100

Board Action Requested

Approved

Item Presenter

Becky Huff, Tax Collector

Release Report for REAL ESTATE, PERSONAL PROPERTY and MOTOR VEHICLE

(Releases over (\$100.00))

MONTH: May

DATE RANGE: 5/1/2019 - 5/31/2019

SUBMITTED BY: Becky Huff

<u>Taxpayer Name</u>	<u>Parcel#</u>	<u>Bill Year</u>	<u>Reason</u>	<u>Released Value</u>	<u>Released Tax</u>
RICHARDSON, RIC	936875000	2018	PROPERTY SITUS/TAXED IN VA	-18,818.00	-142.76
TOMPKINS, CHRISTOPHER W	002837000	2018	CORRECT FOR HISTORIC DEFERMENT	-190,650.00	-1,622.25
EVANS, WILLIAM MARTIN	962727000	2018	REMOVED BOAT NOT OWNED	-111,546.00	-893.40
Total Tax Released:					-2,658.41



North Carolina Vehicle Tax System

NCVTS Pending Refund report

Report Date 6/4/2019 3:00:47 PM

Primary Owner	Secondary Owner	Address 1	Address 3	Plate Number	Refund Reason	Tax Jurisdiction	Levy Type	Change	Interest Change	Total Change
JONES, BOBBY JEFFERSON	JONES, ANNA DELONG	4726 ELM CT	KITTY HAWK, NC 27949	0BX88305	Tag Surrender	C99	Tax	(\$170.91)	\$0.00	(\$170.91)
						T08	Tax	(\$109.09)	\$0.00	(\$109.09)
						T08BN	Tax	(\$14.55)	\$0.00	(\$14.55)
						Refund			\$294.55	
SABO, MARC ANTHONY		106 W ACADEMY ST	WILLIAMSTON, NC 27892	PKS5694	Tag Surrender	C99	Tax	(\$348.88)	(\$17.45)	(\$366.33)
						F51	Tax	(\$32.29)	(\$1.62)	(\$33.91)
						S99	Tax	(\$76.46)	(\$3.82)	(\$80.28)
						Y17	Tax	(\$19.75)	(\$0.98)	(\$20.73)
Refund			\$501.25							
WELLHAM, ANN MARIE	QUINN, MARGARET JEAN	PO BOX 1001	KITTY HAWK, NC 27949	0BX87842	Tag Surrender	C99	Tax	(\$59.94)	\$0.00	(\$59.94)
						T08	Tax	(\$38.27)	\$0.00	(\$38.27)
						T08BN	Tax	(\$5.10)	\$0.00	(\$5.10)
Refund			\$103.31							
Refund Total			\$899.11							

Tax	District	Net
C99	COUNTY	(\$597.18)
T08	CITY	(\$147.36)
T08BN	CITY	(\$19.65)
F51	FIRE	(\$33.91)
S99	SPECIAL	(\$80.28)
Y17	SPECIAL	(\$20.73)
TOTAL:		(\$899.11)



Oregon Inlet Task Force

Description

The Oregon Inlet Task Force asks that Russ King be appointed to the Task Force to replace Jed Dixon who has resigned.

Board Action Requested

Approve

Item Presenter

Commissioner Jim Tobin



Commissioners' Business & Manager's/Attorney's Business

Description

Remarks and items to be presented by Commissioners and the County Manager.

Board Action Requested

Consider items presented

Item Presenter

Robert Outten, County Manager