

THIS CONTRACT is made and entered into this the 19th day of March, 2013, by and between TOWN OF SOUTHERN SHORES, a body corporate and politic existing pursuant to the laws of the State of North Carolina (hereinafter referred to as "the TOWN"), and ANLAUF ENGINEERING, PLLC, a professional limited liability company organized under the laws of the State of North Carolina, (hereinafter referred to as "CONTRACTOR").

1. SERVICES TO BE PROVIDED AND AGREED CHARGES

The services and/or material to be furnished under this CONTRACT (hereinafter referred to collectively as "SERVICES") are as set forth in Exhibit A attached hereto and incorporated herein by reference; and the agreed charges for such SERVICES are as set forth in Exhibit B attached hereto and incorporated herein by reference.

2. TERM OF CONTRACT

¹⁶ The term of this CONTRACT for SERVICES is from MARCH 19, 2013 to MARCH 18, 2016. Either party may nonetheless cancel this CONTRACT on thirty (30) days written notice to the other party by certified mail or personal delivery. The TOWN may cancel this CONTRACT at any time for cause, including, but not limited to, the failure of the CONTRACTOR to satisfactorily perform the SERVICES required under this CONTRACT. This CONTRACT is subject to the availability of funds to purchase the specified SERVICES and may be terminated at any time if such funds become unavailable.

3. PAYMENT TO CONTRACTOR

The TOWN agrees to pay at the rates specified for SERVICES satisfactorily performed in accordance with this CONTRACT. Unless otherwise specified, the CONTRACTOR shall submit an itemized invoice to the TOWN by the end of the month during which SERVICES are performed. Payment will be processed promptly upon receipt and approval by the TOWN of the invoice.

4. FREEDOM TO EMPLOY

The CONTRACTOR may employ assistants at its sole expense and discretion as may be necessary to fulfill CONTRACTOR's obligations under this CONTRACT. The CONTRACTOR agrees that anyone to whom it delegates any or all of the SERVICES called for by this CONTRACT will be competent, qualified and capable of performing the work without any supervision, contact or assistance by the TOWN's employees. Any such assistant will be employed only by the CONTRACTOR, and will not be an employee of the TOWN.

5. INDEPENDENT CONTRACTOR

Both the TOWN and the CONTRACTOR agree that the CONTRACTOR shall act as an independent contractor and shall not represent itself as an agent or employee of the TOWN for any purpose in the performance of the CONTRACTOR'S duties under this CONTRACT. Accordingly, the CONTRACTOR shall be responsible for payment of all Federal, State and local taxes arising out of the CONTRACTOR'S activities in accordance with this CONTRACT, including by way of illustration but not limitation, Federal and State income

tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required.

In performing the SERVICES, the CONTRACTOR is acting as an independent contractor and shall perform SERVICES in accordance with currently approved methods and practice in the CONTRACTOR'S professional capacity and in accordance with the standards of applicable professional organizations and licensing agencies.

In performing the SERVICES, the CONTRACTOR is acting as an independent contractor and is not an employee, subcontractor, agent, servant, partner nor joint venturer of the TOWN. The CONTRACTOR has the right to use its best judgment and efforts to fulfill the terms and obligations of this CONTRACT. CONTRACTOR further understands and acknowledges the following:

- a. CONTRACTOR will receive no compensation other than as outlined in this CONTRACT and is not subject to nor eligible for any benefits which may be offered by the TOWN to its employees, such as vacation pay, sick leave, insurance coverage or retirement plan participation.
- b. The SERVICES provided in accordance with this CONTRACT are an independent calling or occupation.
- c. The CONTRACTOR is expected to use its own skill, judgment and expertise to fulfill the obligations of this CONTRACT, and is not supervised, directed or controlled by the TOWN as to the means or methods it should employ.
- d. The CONTRACTOR is not required to perform tasks in any particular order or sequence.
- e. The CONTRACTOR needs no training from the TOWN as to how to fulfill its duties and responsibilities.
- f. The CONTRACTOR may determine its own daily schedule and those of its own employees or servants without prior approval of the TOWN.
- g. The CONTRACTOR is not required to devote any particular percentage of its time or resources to perform the SERVICES required hereunder.
- h. The CONTRACTOR shall furnish its own equipment and supplies.
- i. Although the CONTRACTOR may be provided the use of the TOWN's facilities, such use is provide merely to facilitate the CONTRACTOR's coordination with the TOWN's staff and communication with vendors, other contractors engaged on the project, and members of the community.
- j. To the extent the CONTRACTOR must procure or maintain any insurance, license, certification or trade membership, it must do so at its own cost.
- k. This CONTRACT shall not prevent CONTRACTOR from performing other services for other parties. CONTRACTOR may engage in other business endeavors or projects of any kind or nature as long as such activities do not conflict with CONTRACTOR's relationship with the TOWN pursuant to this agreement.

6. INSURANCE AND INDEMNITY

CONTRACTOR shall purchase and maintain reasonable liability insurance coverage, as protection from judgments of any kind, including but not limited to general liability insurance and automobile insurance on all vehicles used by the CONTRACTOR, its employees, agents or sub-contractors in performing services under this CONTRACT.

The CONTRACTOR shall indemnify and save harmless the TOWN, its agents and employees from and against all actions, liability, claims, suits, damages, cost or expenses of any kind which may be brought or made against the TOWN or which the TOWN must pay and incur by reason of or in any manner resulting from injury, loss or damage to persons or property resulting from negligent performance of or failure to perform any of the CONTRACTOR's obligations under the terms of this CONTRACT.

The CONTRACTOR shall be fully responsible to the TOWN for the acts and omissions of its sub-contractors and of persons either directly or indirectly employed by it, as the CONTRACTOR is for the acts and omissions of persons directly employed by it.

In addition, the CONTRACTOR shall comply with the North Carolina Worker's Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event the CONTRACTOR is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the CONTRACTOR shall carry or cause its employees to carry adequate medical/ accident insurance to cover any injuries sustained by its employees or agents during the performance of SERVICES. The CONTRACTOR agrees to furnish the TOWN proof of compliance with said Act or adequate medical/ accident insurance coverage upon request.

The CONTRACTOR upon request by the TOWN shall furnish a Certificate of Insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to the TOWN verifying the existence of any insurance coverage required by the TOWN. The Certificate will provide for sixty (60) days advance notice in the event of termination or cancellation of coverage.

In the event the CONTRACTOR shall fail at any time to have in force and effect insurance as required by this Section, the CONTRACTOR agrees to indemnify and hold harmless the TOWN for (1) any premium paid by the TOWN to maintain insurance coverage applicable to CONTRACTOR and/or its employees or subcontractors, and (2) any workers' compensation benefits paid by the TOWN as a result of the CONTRACTOR's failure to comply with this Section.

7. HEALTH AND SAFETY

The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the provision of the SERVICES. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees from the provision of the SERVICES and other persons who may be affected thereby.

8. NON-DISCRIMINATION IN EMPLOYMENT

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex,

race, creed, or national origin. In the event the CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this CONTRACT may be canceled, terminated or suspended in whole or in part by the TOWN, and the CONTRACTOR may be declared ineligible for further TOWN contracts.

9. GOVERNING LAW

This CONTRACT shall be governed by and in accordance with the laws of the State of North Carolina.

10. FORUM SELECTION

All actions relating in any way to this CONTRACT shall be brought in the General Court of Justice of the State of North Carolina or in the Federal District Court for the Eastern District of North Carolina.

11. NON WAIVER OF IMMUNITY

Nothing set forth herein is intended nor shall be construed as a waiver of any immunity available to the TOWN, its governing board, officers or employees.

12. OTHER PROVISIONS

This CONTRACT is subject to such additional provisions as are set forth in any addendum executed separately by each party and attached hereto.

13. CONTRACT DOCUMENTS/AMENDMENTS

This document together with the purchase order and any attached exhibits constitutes the entire contract between the said two parties and supersedes all prior and contemporaneous negotiations, agreements and understandings of either or both parties in connection the subject matter of this CONTRACT. The terms of this CONTRACT may only be modified by a written mutual agreement signed by the parties and attached hereto.

14. NOTICES

Any notice, request, or report given by one party to the other shall be in writing, deposited in the United State Mail (postage prepaid) or hand delivered and properly addressed at follows:

If the notice is to the TOWN:

Town of Southern Shores
5375 N. Virginia Dare Trail
Southern Shores, NC 27949
Attn: _____

with copy to:

Benjamin M. Gallop
Town of Southern Shores Attorney
Hornthal, Riley, Ellis & Maland, L.L.P.

2502 S. Croatan Hwy.
Nags Head, NC 27959

If the notice is to the Contractor:

Anlauf Engineering, PLLC
4721 W. Eckner Street
Kitty Hawk, NC 27949
Attn: Joseph J. Anlauf

Or such other person or address as the TOWN or CONTRACTOR shall have designated by due notice to the CONTRACTOR or TOWN respectively.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

Both the TOWN and the CONTRACTOR agree to the above contractual terms and conditions.

TOWN:

TOWN OF SOUTHERN SHORES

Witnessed or Attested By:

Carmel Gordon
(SEAL)


By: [Signature]

Title: Town Manager

Date: 3/19/2013

CONTRACTOR:

ANLAUF ENGINEERING, PLLC

Witnessed or Attested By:

Patricia A. Forrester
(SEAL)

By: [Signature] P.E.

Title: Owner

Date: 3/19/13

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

Bonnie Swain
Town of Southern, Finance Director
Shores

STANDARD HOURLY RATES

Category	Hourly Billing Rate
Civil Engineering	\$75/hr.
Environmental Consulting	\$100/hr.
Architectural Consulting	\$75/hr.
Construction Inspection	\$75/hr.
Subcontracted Services	Cost + 10%

Reimbursable Expenses	
18"x24" Prints	\$1.50
18"x24" Mylars	\$3.00
24"x36" Prints	\$2.00
36"x42" Prints	\$2.50
11"x17" copies	\$0.20
11"x17" color copies	\$0.50
Letter/Legal copies	\$0.10
Color letter/legal copies	\$0.50

The rates reflected hereon describe the current billing rates for Anlauf Engineering, PLLC and the members of the Outer Banks Collaborative to perform work in the Town of Southern Shores. Anlauf Engineering, PLLC, reserves the right to adjust pricing annually, with an effective date of July 1st.

EXHIBIT A

Scope of Services

CONTRACTOR agrees to provide professional engineering, environmental, surveying and related services upon demand and authorization of TOWN.

A scope of services, time period for performance of services, limitations on fees and any other special conditions may be established with each work demand order and authorization to proceed issued by the TOWN. CONTRACTOR's hourly rate schedule for CONTRACTOR's employees and expenses shall be as set forth in Exhibit B attached to this CONTRACT and incorporated herein by reference.