



Town of Southern Shores

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Town of Southern Shores

Special Meeting

December 9, 2009

8:00 A.M.-Pitts Center

Minutes

The Southern Shores Town Council met on December 9, 2009 at the Pitts Center.

The following Council Members were present: Mayor Hal Denny, Jodi Hess, Jim Pfitzenmayer, Kevin Stroud and George Kowalski. Also present were: Charles Read, Town Manager, Carrie Gordin, Town Clerk and Ben Gallop, Town Attorney, Tom Bennett, Canal Dredging Project Manager, and Joe Anlauf, Town Engineer.

Mayor Denny called the meeting to order at 8:00 a.m., led the Pledge of Allegiance and held a moment of silence.

Mayor Denny asked Tom Bennett, Canal Project Manager, to present several issues to Council regarding the canal maintenance dredge project for Council discussion and consideration.

Tom Bennett stated that in order to move ahead with the dredging project, Council needs to approve certain documents presented today.

He stated the first document is an amendment to the original Canal Maintenance Dredge Contract Proposal. He stated there is a change in wording wherever it reads "Town Engineer" it should read "Project Manager"; a change in the contract time and liquidated damages on page 19, the base bid on page 22 should be reallocated as set forth in the provided chart and on page 24 contract bid sheet unit prices should be amended to add item 9 also shown on chart. He stated the need for the cost changes is due to the use of the alternates 1 & 2. He reviewed the cost changes with Council and he explained with using the new hydrocyclone method the costs have changed since the Town will no longer need additional spoil sites such as the Duck Woods Country Club and the Stone property.

Mayor Denny asked if we are approving the use of alternates 1 & 2 why are we still showing the base bid amount. The Project Manager stated when the contract was sent for bid all contractors were to use a base bid number and if there ever was a challenge the base bid should be showed.

The Town Engineer stated this amendment will replace the original bid tally sheet so the inclusion and comparison of alternates 1 & 2 shows a complete document.

Mayor Denny asked why there is a unit price difference shown in items 7 (\$54.88) and 9 (\$66.09).

The Town Engineer explained the base bid number is divided by 17, 500 cu. yd. of spoil and in negotiations with the contractor and in the event, by survey, that the amount of spoil is more than 17, 500 the additional amount would be charged at \$66.09.

Following discussion Council Member Hess moved to approve the amendment to the contract proposal for Phase 1 of the canal maintenance dredging project as presented. Council Member Pfizenmayer seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer, Stroud and Kowalski voting aye; no Council Member voting no and no Council Member absent.

[Clerk's Note: A copy of the amendment to the contract proposal is hereby attached as Exhibit A].

The Project Manager addressed the Conditional Notice to Proceed as the next item.

The Project Manager stated the Town is still waiting for permits but he is asking Council to approve as presented the Conditional Notice to Proceed to the contractor as he explained would allow the contractor to begin work on things that do not require permit approval. He stated allowing this work to begin would save 5-7 days or more once the actual dredging begins. He stated the Town was told verbally by the State it would have the permits the week of December 17-19. He stated there is a risk if permits are not received and the contractor has performed work that may need to be stopped the Town would owe them.

Mayor Denny asked do we know how much the Town would owe the contractor. The Town Engineer stated around a half-million dollars which would be for mobilization, de-mobilization and restoration to the site and any additional work done.

Council Member Stroud stated he is concerned about this.

Council Member Hess stated CAMA has assured us verbally that we will get the permits next week.

Council Member Stroud asked can we get it in writing from CAMA stating we will get the permits before we actually get them and he was told no.

The Town Manager stated time is our enemy and if we don't start now there will not be enough days in the cycle to complete the project.

The Project Manager stated he is comfortable that we will get the permits and the work should begin and not hold up the project.

Council Member Pfizenmayer stated we have been working on this for years and there is a costly amount if we start the work and don't get the permits but we need to move ahead and we have been told we will get the permits.

The Town Engineer stated we are waiting for the Division of Coastal Management permit, CAMA major permit and letter from the Army Corps of Engineer.

Council Member Kowalski stated the worse case scenario is we wait two weeks for the permits and then the weather turns lousy and the project can't get done this year.

The Town Engineer stated the weather could turn bad and other things could happen but to get some of the dredging done and getting the hydrocyclone method working will set a precedent which will be better for the next phase. He stated he doesn't think this contractor should be held responsible if the project doesn't get done, the contract is done with no liquidated damages. He stated the next phase will be a new project.

Council Member Stroud moved to accept the Conditional Notice to Proceed as presented. Council Member Pfizenmayer seconded. The motion passed with Mayor Denny and Council Members Hess,

Pfizenmayer, Stroud and Kowalski voting aye; no Council Member voting no and no Council Member absent.

[Clerk's Note: A copy of the Conditional Notice to Proceed is hereby attached as Exhibit B.]

The Project Manager stated to continue to move the project along a proposed ordinance and resolution has been prepared to allow the contractor to continue working twenty-four hours seven days a week and he requests Council approve these documents.

Council Member Hess stated the property owners adjacent to the North Marina have been contacted about this time frame and they are all supportive.

The Town Engineer stated if the Town would need to apply for a dredging extension approval of these documents would show the Town has made a maximum effort to get the project completed.

Council Member Hess addressed some minor changes to the resolution and Council approved the changes.

Council Member Hess moved to approve Resolution 2009-12-02 Setting the Days and Times that Canal Maintenance Dredging Operations May Be Performed as amended. Council Member Pfizenmayer seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer, Stroud and Kowalski voting aye; no Council Member voting no and no Council Member absent.

[Clerk's Note: A copy of Resolution 2009-12-02 Setting the Days and Times that Canal Maintenance Dredging Operations May Be Performed is hereby attached as Exhibit C].

The Town Attorney stated in drafting the ordinance it addresses the noise issue as related to the project and also allows the contractor to go to the Code Enforcement Administrator or Council to request a variance in time if needed.

Mayor Denny moved to approve Ordinance 2009-12-01 amending Chapter 22, Offenses and Miscellaneous Provisions, Section 22. Council Member Hess seconded. The motion passed with Mayor Denny and Council Members Hess, Pfizenmayer, Stroud and Kowalski voting aye; no Council Member voting no and no Council Member absent.

[Clerk's Note: A copy of Ordinance 2009-12-01 is hereby attached as Exhibit D].

Jeremy Sampson, Dredge Contractor, thanked Council for working with them and allowing them the extra time to complete the project.

The Town Attorney stated that due to a conflict of interest with his firm and the Dredge Contractor the Town needed to hire an outside attorney to handle the canal dredging affairs but now that the contract is complete he has contacted the State Bar to request permission to provide services to the Town on the dredging project and to release Crouse Gray as canal dredging attorney. He asked Council if he should follow up on the request to the Bar. Council agreed.

Other Items

Mayor Denny stated the Planning Board is requesting Council set a public hearing at their next Council meeting in January for the final subdivision site plan for property located at 109 Osprey Lane. Council agreed to set the hearing on January 5, 2010.

Mayor Denny asked Council to provide the Town Manager with issues they would like to discuss at the upcoming January retreat. He stated department heads will provide presentations to Council at that time.

Mayor Denny stated two items he wants to see discussed at the retreat is a plan for lighting the Town parking lot and how to fund the Capital Improvement Plan (CIP).

Council Member Pfizenmayer stated he would like to have representatives from each civic group to provide their goals for the upcoming year at the retreat.

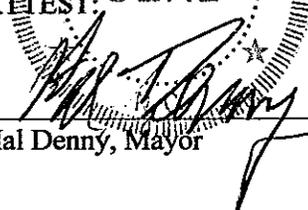
The Town Manager stated last year each Council Member was teamed with a specific department head to work together on the budget process and he would like to see this same process used this year. Council agreed.

Mayor Denny stated he would be working with the Town Manager on the retreat preparation.

Council agreed if there are no emergent issues from the January 5 Council meeting the January 19th Council meeting would be cancelled but the Council Retreat will be held January 20-22.

Hearing no other business Mayor Denny moved to adjourn at 9:10 a.m.

ATTEST: SEAL


Hal Denny, Mayor

Respectfully submitted:


Carrie Gordin, Town Clerk

Exhibit A

**AMENDMENT TO CONTRACT PROPOSAL
PHASE 1, CANAL MAINTENANCE DREDGING PROJECT**

THIS AMENDMENT TO CONTRACT PROPOSAL dated the 21st day of September, 2009 between the Bidder, Sampson Contracting, Inc., and the Town of Southern Shores hereby amend the Contract Proposal, Phase 1, Canal Maintenance Dredging Project submitted by Sampson Contracting, Inc., to the Town of Southern Shores at the bid opening of October 27, 2009, as follows:

1. On page 6, SUPERVISION BY CONTRACTOR, opening paragraph, last sentence, the word "Engineer" should be struck and the term "Project Manager" should be added replacing the word "Engineer".
2. On page 6, SUPERVISION BY CONTRACTOR, second paragraph, last sentence, the word "Engineer" should be struck and the term "Project Manager" should be added replacing the word "Engineer".
3. On page 6, SUPERVISION BY CONTRACTOR, fourth paragraph, last sentence, the word "Engineer" should be struck and the term "Project Manager" should be added replacing the word "Engineer".
4. On page 13, NOTES TO CONTRACTOR, opening paragraph, last sentence, the word "Engineer" should be struck and the term "Project Manager" should be added replacing the word "Engineer".
5. On Page 19, CONTRACT TIME AND LIQUIDATED DAMAGES, opening paragraph, eighth sentence, the date of "October 31, 2009", shall be struck and the date "September 30, 2010" should be added replacing the date "October 31, 2009". (Covered by Addendum No. 2, dated August, 21 2009)

6. Page 22, Base Bid, should be reallocated as follows:

	Bid Tally	Base Bid	Alternate 1&2
1. *Bid for Mobilization/Demobilization		\$637,844.00	\$493,473.00
2. *Bid for De-watering Area Construction		\$490,732.00	\$100.00
3. Unit Price for Dredging \$66.09 (Base Bid) and \$54.88(Alt 1 & 2) /cubic yard x 17,500 cu. yds.		\$1,156,591.00	\$960,267.00
4. *Bid for De-watering Area Restoration		\$242,613.00	\$100.00
5. *Bid for Dredge Spoil Hauling		\$99,225.00	\$229,900.00
6. *Bid for Disposal Site Preparation		\$150,620.00	\$100.00
Total		\$2,777,625.00	\$1,683,940.00

7. Page 24, Contract Bid Sheet - Unit Prices, should be amended to add the following item:

Item Description	Unit	Unit Price
9 Dredge Spoils removed in excess of 17,500 cu.yds.	1 yd ³	\$66.09

(Only if excess is authorized by the Town of Southern Shores in accordance with the language contained within the Contract Proposal.)

IN WITNESS WHEREOF, the parties have executed this Amendment to the Contract Proposal the day and year first above written.

Sampson Contracting, Inc.

By: _____
Town of Southern Shores
By: _____

Exhibit B

Page 1 of 1

Town of Southern Shores

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

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CONDITIONAL NOTICE TO PROCEED

December 9, 2009

Sampson Contracting, Inc.

3938 Caratoke Hwy.

Barco, North Carolina 27917

Contract: Town of Southern Shores, Phase 1 - Canal Maintenance Dredging Project

Project: Maintenance Dredging of Town Waterway System - Phase 1

You are notified that the Contract Times under the above contract will commence to run on December 9, 2009. By that date, you are to start performing your obligations under the Contract Documents and with the following conditions/limitations:

1. No development shall occur within the 75' Estuarine Shoreline AEC until the NCDE&NR, Division of Coastal Management issues the modification to the existing CAMA Major Permit, Permit Number 95-09.
2. During this Conditional Period, prior to the issuance of the required permits and approvals, the contractor may perform the following:
 - A. Removal of the identified trees and vegetation.
 - B. Installation of the Soil Erosion and Sedimentation Control measures.
 - C. Mobilize and deliver to the site the dredge, work barge, that portion of the piping initially required and related appurtenances.
 - D. Mobilize and deliver to the site the hydrocyclone equipment and related appurtenances.In the unlikely event that the required permits and or approvals for the project are not obtained and we are unable to continue with the project the contractor will be entitled to invoice the Town for work completed.

In accordance with the signed Amendment to Contract Proposal the date of completion is September 30, 2010 and the date of readiness for final payment is October 1, 2010.

Charles B. Read, Jr. - Town of Southern Shores Town Manager

Received, Reviewed and Agreed to by:

Jeremy Sampson - Sampson Contracting, Inc.

**RESOLUTION SETTING THE DAYS AND TIMES THAT CANAL MAINTENANCE
DREDGING OPERATIONS MAY BE PERFORMED**

WHEREAS, the Town of Southern Shores has worked for approximately seven years to obtain the necessary funding and permits to perform maintenance dredging of the Town's canal systems; and

WHEREAS, State and Federal agencies limit the days of the year that maintenance dredging of the Town's canal systems may be performed; has endured a lengthy process for securing funding and permits and;

WHEREAS, the extensive process of obtaining the necessary funding and permits to perform the Town's canal maintenance dredging project exhausted a substantial portion of the allotted time for performing the maintenance dredging through no fault of the Town; and

WHEREAS, the Town's canal maintenance dredging contractor may not be able to perform the canal maintenance dredging within the time allotted by State and Federal agencies absent an increase the times of day and days of week which the contractor may operate; and

WHEREAS, any detriment to the public associated with increasing the times and days which the canal maintenance dredging contractor may operate is greatly outweighed by the limited nature of the project and the public need for maintenance of the Town's canal systems.

NOW THEREFORE BE IT RESOLVED, that pursuant to Town Code Section 22-3(c) the Town of Southern Shores does hereby set the following parameters for the Town's canal maintenance dredging contractor and its subcontractors to perform canal maintenance dredging operations:

- (1) Canal maintenance dredging operations may be performed in the area from the north marina through the Ginguite Creek channel to Marker (s) #1 and # 2 twenty-four (24) hours a day seven (7) days a week; and
- (2) Canal maintenance dredging operations may otherwise be performed in the canals dawn to dusk seven (7) days a week.

The above Stated parameters shall remain in effect as necessary for the canal maintenance dredging contractor to finish the canal maintenance dredging project currently under contract by 11:59 p.m. February 14, 2010.

Adopted this 9th day of December 2009.

S E A L

Hal Denny, Mayor

ATTEST:

Carrie Gordin, Town Clerk

Ordinance 2009-12-01

**AN ORDINANCE OF THE SOUTHERN SHORES TOWN COUNCIL
AMENDING CHAPTER 22 – OFFENSES AND MISCELLANEOUS PROVISIONS**

ARTICLE I. Purpose(s) and Authority.

WHEREAS, the Town of Southern Shores (the “Town”) may enact and amend ordinances for defining and abating nuisances and otherwise in the interest of the public's health, safety, morals and general welfare pursuant to North Carolina General Statutes § 160A-174; and

WHEREAS, the Town of Southern Shores owns and/or maintains canals and other waterways within its jurisdiction which must occasionally be dredged to ensure their navigability by the citizens and visitors of the Town; and

WHEREAS, dredging operations within the Town’s jurisdiction will often be subject to time limitations and other permitting limitations set by various State and Federal agencies outside of the Town’s control; and

WHEREAS, any detriment caused to the public by the extension of hours and days beyond normal business hours and days for the dredging of the Town owned and/or maintained canals and other waterways is outweighed by the public need for navigable waterways; and

WHEREAS, the Town Council finds that it is in the interest of the public's health, safety, morals and general welfare that the Town’s Code of Ordinances be amended as Stated below.

Article II. Construction

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

Article III. Amendment of Chapter 22 of the Town Code of Southern Shores

NOW, THEREFORE, BE IT ORDAINED by the Town Council that the Town’s Code of Ordinances shall be amended as follows:

PART I. That Chapter 22 Section 22-3 be amended as follows:

Sec. 22-3. Noises prohibited.

...

(c) Noises and activity associated with the maintenance dredging of Town owned and/or maintained canals or waterways at the Town’s direction shall not be considered to be unreasonably loud or otherwise considered to be a public nuisance so long as such noises and activities occur within time and day parameters set forth by resolution of the Town council. Upon application of the contractor performing such maintenance dredging to the Town’s code enforcement administrator showing the immediate need for extended

working hours and/or days to perform maintenance dredging operations in compliance with the requirements of State or Federal agencies, the code enforcement administrator may issue a written permit to the contractor setting such extended days and times as the administrator feels appropriate. Such permit shall be in effect until the next regularly scheduled meeting of the Town council and shall remain in effect thereafter should Town council not take any action to reduce the extended days and times.

Article IV. Severability

If any words, phrases, language, section or other portion of this Ordinance are held invalid by a court of competent jurisdiction, then all remaining words, phrases, language, sections or other portions of this Ordinance shall remain in full force and effect.

Article V: Effective Date

This Ordinance is effective immediately upon adoption.

Adopted this the 9th day of December 2009.

S E A L

Hal Denny, Mayor

ATTEST:

VOTE: 5 Aye 0 Nay

Carrie Gordin, Town Clerk

Approved as to form:

Ben Gallop, Town Attorney