

**June 10, 2013**  
**Board of Commissioners Meeting**

**2. Proposal for Permitting and Engineering Support for Non-Federal Beach Nourishment Project (Attached NB-2)**

This item was for approval of the permitting and design proposal from Coastal Planning and Engineering for the next steps toward nourishing the beaches in Kill Devil Hills. Planning Director Greg Loy explained that the Town Attorney has reviewed the attached proposal and is satisfied with the legal aspects of the contract. Accepting this proposal would authorize continued pursuit of the Non-Federal Project as voted on by the Board of Commissioners at the May 24, 2013 meeting, to proceed with the local beach nourishment project to extend from Tanya Drive north to the Kill Devil Hills/Kitty Hawk line and modeled on areas authorized by the Dare County Beach Erosion Abatement and Shoreline Protection Plan. Funding for this portion of the project would be provided by the budget amendment contained in the packet materials.

Completion of the services outlined in Exhibit A of the agreement is expected to be completed within 24 months of the Town giving Coastal Planning & Engineering authorization to proceed. Deliverables for this phase of the project include:

- Monthly progress reports;
- Letter report describing the results of the reconnaissance offshore sand source survey;
- Engineering report;
- Final Environmental Assessment;
- Final Essential Fish Habitat Assessment;
- Final Biological Assessment;
- Major CAMA Permit application; and
- Department of the Army Permit application.

Commissioner Pitt stated that he would like to see the anticipated budget amount of "...between \$15 million and \$20 million" contained in Exhibit A, Page A-1, first bullet near the bottom of the page, be amended to "...not to exceed \$20 million." He felt "fixed" costs that include engineering, permitting costs and mobilization could total as much as \$5 million dollars. The higher amount of \$20 million may be the overall cost of the preferred project; however, if funding at this level is not available, the Town should have the option to pursue a less costly project. Commissioner Pitt made a motion to amend Exhibit A, Page A-1, first bullet near the bottom of the page, be amended to "...not to exceed \$20 million." Commissioner Hogan seconded that motion and approval was unanimous, 4-0.

Following the recommendation by Staff, Commissioner Pitt made a motion for the Board of Commissioners to:

- Accept the proposal from Coastal Planning & Engineering in an amount not to exceed \$322,780, and approve the attached corresponding budget amendment, for the provision of services in the attached agreement, including project management, environmental documentation and permitting, engineering and design, and a reconnaissance borrow area survey, and authorize its execution by the Town Manager; and
- Authorize the Town Manager to explore the potential for cost-sharing with the Town of Duck the reconnaissance survey of offshore sand sources, and to take advantage of splitting this \$61,719 cost as available;

Commissioner Hogan seconded that motion and approval was unanimous, 4-0.



# TOWN OF KILL DEVIL HILLS

*Land Where Flight Began*

MEMORANDUM

June 10, 2013

TO: Mayor and Board of Commissioners

FROM: Debora P. Diaz, Town Manager 

REF: New Business

**2. Proposal for Permitting and Engineering Support for Non-Federal Beach Nourishment Project (Attached NB-2)**

Attached is a permitting and design proposal and cover letter from Coastal Planning and Engineering for the next steps toward nourishing the beaches in Kill Devil Hills. The Town Attorney has reviewed the attached proposal and is satisfied with the legal aspects of the contract. Accepting this proposal will continue pursuit of the Non-Federal Project as voted on by the Board of Commissioners at the May 24, 2013 meeting, to proceed with the local beach nourishment project to extend from Tanya Drive north to the Kill Devil Hills/Kitty Hawk line and modeled on areas authorized by the Dare County Beach Erosion Abatement and Shoreline Protection Plan.

Completion of the services outlined in Exhibit A of the agreement is expected to be completed within 24 months of the Town giving Coastal Planning & Engineering authorization to proceed. Deliverables for this phase of the project include:

- Monthly progress reports;
- Letter report describing the results of the reconnaissance offshore sand source survey;
- Engineering report;
- Final Environmental Assessment;
- Final Essential Fish Habitat Assessment;
- Final Biological Assessment;
- Major CAMA Permit application; and
- Department of the Army Permit application.

Staff recommends the Board of Commissioners:

- Accept the proposal from Coastal Planning & Engineering in an amount not to exceed \$322,780, and approve the attached corresponding budget amendment, for the provision of services in the attached agreement, including project management, environmental documentation and permitting, engineering and design, and a reconnaissance borrow area survey, and authorize its execution by the Town Manager;
- Authorize the Town Manager to explore the potential for cost-sharing with the Town of Duck the reconnaissance survey of offshore sand sources, and to take advantage of splitting this \$61,719 cost as available; and

A motion will be in order.

**TOWN OF KILL DEVIL HILLS**  
**BUDGET AMENDMENT REQUEST**



<i>Finance Department Use Only</i>
<i>Budget Amendment Number: 21</i>
<i>Finance Officer: [Signature]</i>

INCREASE (DECREASE)			INCREASE (DECREASE)		
CODE	ACCOUNT DESCRIPTION	AMOUNT	CODE	ACCOUNT DESCRIPTION	AMOUNT
4900 575040	C/O Beach Nourishment	322,780.00	10 499194	Fund Balance Appropriated – Beach Nourishment	322,780.00
TOTAL		322,780.00	TOTAL		322,780.00

JUSTIFICATION: To appropriate funds for CPE to provide permitting and engineering support for non-federal beach nourishment project

RECOMMENDED: [Signature] APPROVED: \_\_\_\_\_

DATE: June 10, 2013

## COASTAL PLANNING & ENGINEERING OF NORTH CAROLINA, INC.

4038 MASONBORO LOOP ROAD, WILMINGTON, NC 28409

910-791-9494 PHONE 910-791-4129 FAX

May 9, 2013  
(Revised May 17, 2013)

Debbie Diaz  
Town Manager  
Town of Kill Devil Hills  
P.O. Box 1719  
Kill Devil Hills, NC 27948

**Re: Proposal: Permitting and Engineering Support for Non-Federal Beach Nourishment Project**

Dear Ms. Diaz:

This letter is in response to the Town of Kill Devil Hills request for a proposal to provide engineering, environmental, and geotechnical services to the Town of Kill Devil Hills in support of a non-federal beach nourishment project.

The Scope of Professional Services is attached to this proposal as Exhibit A. The Work included under Tasks 1 through 4 will be performed for a lump sum fee of \$322,780. These services include project management, environmental documentation and permitting, engineering and design, and a reconnaissance borrow area survey. CPE-NC has a special preferred relationship with Coastal Planning & Engineering, Inc. (CPE), and will utilize CPE's personnel, resources and assets to perform the proposed services.

Barring any unforeseen circumstances, CPE-NC anticipates the completion of the scope of work no later than 24 months following receipt of your written authorization to proceed. The following deliverables associated with this scope will be provided to the Town and applicable agencies within 24 months of receipt of your written authorization to proceed. Please see Exhibit B – List of Deliverables, for a description of each of the following deliverables:

- Monthly progress reports;
- Letter report describing the results of the reconnaissance offshore sand source survey;
- Engineering Report;
- Final Environmental Assessment;
- Final Essential Fish Habitat Assessment;
- Final Biological Assessment;
- Major CAMA Permit application; and
- Dept. of the Army Permit application

Please note, that the scope of services associated with the reconnaissance survey of offshore sand sources (Task 4) WILL NOT satisfy requirements to permit the borrow source. Our intention is to provide the Town with a letter report describing the results of the reconnaissance survey and recommendations on future borrow area investigations to collect the level of geophysical and geotechnical data required to permit a borrow area. Barring any unforeseen circumstances, we anticipate completion of Task 4 in 90 days following written authorization to proceed. At that time CPE-NC will provide the TOWN with a proposal to conduct the recommended investigations required to permit the recommended borrow area.

It is CPE-NC's understanding that informal discussions have taken place between the Town of Kill Devil Hills and the Town of Duck to share the cost of Task 4. The scope of work developed for Task 4 assumes the results

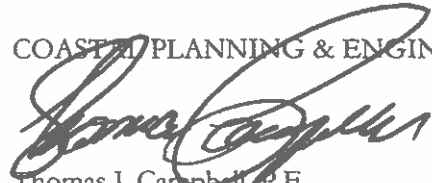
will benefit both communities equally. If in fact the Town of Duck does not wish to share in the cost of Task 4, the scope could be reduced. It is up to the two Town's to determine the terms of sharing the cost of Task 4 (\$61,719). Please note the cost of Task 4 (\$61,719) is included in the previously stated total cost of the proposal of \$322,780.

CPE-NC's performance of the proposed services is conditioned upon mutually acceptable contract terms and conditions. In that regard, attached to this proposal as Exhibit C is our Service Agreement for your consideration as the terms and conditions that will govern CPE-NC's performance of the proposed services.

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

Very truly yours,

COASTAL PLANNING & ENGINEERING OF NORTH CAROLINA, INC.

A handwritten signature in black ink, appearing to read "Thomas J. Campbell", is written over the printed name and title.

Thomas J. Campbell, P.E.  
President

**EXHIBIT A:  
SCOPE OF PROFESSIONAL SERVICES  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA  
PERMITTING AND ENGINEERING SUPPORT FOR NON-FEDERAL BEACH  
NOURISHMENT PROJECT**

Coastal Planning & Engineering of North Carolina, Inc. (CPE-NC) will provide engineering, environmental, and geotechnical services to the Town of Kill Devil Hills (TOWN) in support of a non-federal beach nourishment project. CPE-NC will provide the proposed services utilizing the personnel, resources and assets of Coastal Planning & Engineering, Inc. (CPE) through CPE-NC's special preferred relationship with CPE. This proposal includes environmental, engineering, and project management services associated with designing and permitting a non-federal beach fill project along the northern portion of the TOWN. In addition the proposal includes a reconnaissance investigation of offshore sand sources located approximately 5 miles offshore of the TOWN. The reconnaissance survey is aimed at determining the feasibility of using sand sources located in Federal waters offshore of the TOWN as opposed to the previously proposed borrow site offshore Nags Head in U.S. Army Corps of Engineers (USACE) borrow area S1. Also included in the proposal are services associated with project management.

Upon completing the reconnaissance investigation of the borrow sources, CPE-NC will provide the TOWN with recommendations on which borrow source to permit for the beach nourishment project. CPE-NC will at that time provide a second proposal that will include a detailed geotechnical/geophysical survey of the proposed borrow source which will provide the level of information required to permit the borrow source.

**Background Information:**

Since 2009 the TOWN has been working with CPE-NC to evaluate options for a beach nourishment program along the northern 10,300 feet of the TOWN. The TOWN has requested from CPE-NC a proposal to move forward with design and permitting of a locally constructed non-federal beach nourishment project to provide erosion mitigation and storm damage reduction.

CPE-NC has formulated this proposal based on extensive coordination with the TOWN and discussions with the U.S. Army Corps of Engineers (USACE), the North Carolina Division of Coastal Management (NCDCM), and other resource agencies. The following assumptions have been made in the formulation of this proposal:

- The TOWN wishes to maximize the benefits of a beach fill project with an anticipated budget of between \$15 Million and \$20 Million;
- The TOWN is interested in pursuing a reconnaissance study of a borrow site located outside State waters;
- The permitting and design phase of the beach nourishment project is anticipated to last up to 2 years;
- Environmental documentation will require an Environmental Assessment (EA), a Biological Assessment (BA), and an Essential Fish Habitat (EFH) assessment;



**EXHIBIT A:  
SCOPE OF PROFESSIONAL SERVICES  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA  
PERMITTING AND ENGINEERING SUPPORT FOR NON-FEDERAL BEACH  
NOURISHMENT PROJECT**

- The level of investigation associated with Task 4 should allow CPE-NC to provide recommendations on potential offshore borrow areas to both the Town of Kill Devil Hills and the Town of Duck.

**TASK 1: Project Management**

The CPE-NC 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 consultant, 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. Four (4) in person project meetings between CPE-NC and the TOWN will be held over the anticipated 24 months to complete the contract. Additionally, four (4) conference call meetings are anticipated for a total of nine (8) meetings. This will allow for CPE-NC and the TOWN to hold quarterly progress meetings throughout the permitting and design process. In addition to these meetings, CPE-NC will provide the TOWN, with a monthly 1 page summary of activities, via e-mail.

**TASK 2: Environmental Documentation and Permitting**

**Permitting**

The construction of the beach nourishment project along portions of the TOWN's shoreline will require permits from the Department of the Army (USACE) in order to satisfy the National Environmental Policy Act (NEPA). In addition, a CAMA Major Permit will be required by the State of North Carolina. Major permits are necessary for activities that require other state or Federal permits, for projects that cover more than 20 acres or for construction covering more than 60,000 square feet. Applications for major permits are reviewed by ten (10) state and four (4) Federal agencies before a decision is made.

Along with the USACE, the federal agencies involved in the project planning and formulation during the preparation of the environmental documents will include (but not necessarily be limited to) the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), and the Environmental Protection Agency (EPA). The lead State agency will be the North Carolina Division of Coastal Management (NC DCM), which is responsible for review and issuance of the major CAMA permit. Other State agencies include the North Carolina Division of Marine Fisheries (NC DMF), the North Carolina Wildlife Resources Commission (NC WRC), and the North Carolina Division of Water Quality (NC DWQ).

**EXHIBIT A:  
SCOPE OF PROFESSIONAL SERVICES  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA  
PERMITTING AND ENGINEERING SUPPORT FOR NON-FEDERAL BEACH  
NOURISHMENT PROJECT**

This Scope of Work includes the development and submittal of the complete Department of Army (DOA) Individual Permit (IP) application and the Major CAMA permit application directly to the respective agencies.

The permitting process for both the USACE and NC DCM when completed will result in the issuance of additional approvals required by federal and state agencies prior to the implementation of the beach nourishment project. These include:

- NEPA Compliance
- Coastal Area Management Act (CAMA) Major Authorization
- NCDWQ 401 Certification
- USACE Section 10/404 Permit
- U.S. Fish and Wildlife Service Biological Opinion (BO)
- National Marine Fisheries Service Concurrence
- NC State Historic Preservation Office (SHPO) Concurrence

The submittal of the major CAMA permit application and DOA IP application will serve as project deliverables.

It is possible that the State or the USACE may solicit a Request for Additional Information (RAI) in response to these permit applications. Should this occur, an additional task order will be submitted to the Town under a separate Scope of Work to address the specific RAI requirements.

**Environmental Documentation**

An interagency meeting was held on September 14, 2011 to bring federal and state agency representatives together to present the proposed project and to develop an agreed upon scope of necessary environmental documentation to support the permitting approach. One outcome of the meeting was that the USACE requested a "Project Information Document" to help them assess what environmental documentation would be necessary to support the permitting process. Although it was clear that a Biological Assessment (BA) and an Essential Fish Habitat (EFH) assessment would be required to satisfy the USFW and NMFS, respectively, it was unclear if an Environmental Impact Statement (EIS) or Environmental Assessment (EA) would be required to support the USACE's NEPA requirements.

CPE-NC developed a Project Information Document to provide the USACE with a summary of the relevant existing environmental documentation and biological data that pertains to the proposed Kill Devil Hills beach nourishment project. The information within the document included an assessment of the existing biological data and environmental documentation relevant to the proposed beach nourishment project at Kill Devil Hills. The information was provided to assist the USACE in determining which document, an EIS or EA, would be required. Since submitting this Project Information

**EXHIBIT A:  
SCOPE OF PROFESSIONAL SERVICES  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA  
PERMITTING AND ENGINEERING SUPPORT FOR NON-FEDERAL BEACH  
NOURISHMENT PROJECT**

Document in late November 2012, the USACE has reviewed the information and responded, stating that an EA could suffice for the purposes of this project so long as the scope of the project was essentially the same as described within the federally authorized plan. Although not included in the federal plan, dredging outside of the environmental window (November 15<sup>th</sup> through March 31<sup>st</sup>) is being proposed for this project. The USACE has indicated that despite this deviation from the federal plan, an EA would likely still suffice.

As mentioned above, along with the EA, an EFH and BA would be required. Descriptions of all three documents are as follows:

***Environmental Assessment (EA):***

An EA under NEPA is a concise public document that provides sufficient evidence and analysis for determining whether the USACE should issue a Finding of No Significant Environmental Impact (FONSI) or prepare an EIS. It is designed to help public officials make decisions that are based on an understanding of the human and physical environmental consequences of the proposed project and take actions, in the location and design of the project, that protect, restore and enhance the environment. The core elements of an EA in 40 CFR § 1508.9:

1. The need for the proposal,
2. Alternatives as required by NEPA § 102(2)(E),
3. The environmental impacts of your proposed action and the alternatives, and
4. The agencies and persons consulted.

***Essential Fish Habitat (EFH) Assessment:*** The EFH assessment is utilized by the NMFS to ensure that the project will identify and protect important marine and estuarine fish habitat in accordance to the amended Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). The MSFCMA was enacted by the U.S. Congress to protect marine fish stocks and their habitat, prevent and stop overfishing and minimize bycatch. Congress defined Essential Fish Habitat (EFH) as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." The MSFCMA requires that EFH be identified for all fish species federally managed by the Fishery Management Councils (FMCs) and the NMFS. This document will evaluate the potential impacts to the various essential fish habitats within the designated Permit Area.

***Biological Assessment (BA):*** The purpose for the development of the BA is to document analyses for actions that may affect federally listed species which will serve to satisfy the USFWS. The document is prepared for the Section 7 process to determine whether a proposed major construction activity under the authority of a federal action agency is likely to adversely affect listed species, proposed species, or designated critical habitat. The TOWN is required to determine whether the project related actions may affect listed or proposed species and designated and proposed critical habitat.

**EXHIBIT A:  
SCOPE OF PROFESSIONAL SERVICES  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA  
PERMITTING AND ENGINEERING SUPPORT FOR NON-FEDERAL BEACH  
NOURISHMENT PROJECT**

In order to fulfill the objectives of the EA, EFH, and BA, CPE-NC will acquire, research, and evaluate available data for the study area to determine the nature and extent of those resources that may be affected by project construction. This information will pertain to the nearshore marine, estuarine, and terrestrial habitats within and adjacent to the project areas. CPE-NC does not anticipate the need for field studies to collect any additional environmental data; therefore, this cost proposal does not reflect any additional field studies.

This Scope of Work includes the production costs associated with distributing six (6) hard copies of the Draft and Final environmental documents to the relevant agencies.

It is possible that the State or the USACE may solicit a Request for Additional Information (RAI) in response to these environmental documents. Should this occur, an additional task order will be submitted to the TOWN under a separate Scope of Work to address the specific RAI requirements.

**TASK 3: Engineering and Design**

CPE-NC will develop a design for a locally funded beach nourishment project for the TOWN that addresses long-term erosion issues and provides an acceptable level of storm damage reduction based on a given project budget. The TOWN currently has a federally authorized but unfunded storm damage reduction project that begins at the northern town limits and extends 10,830 feet south, ending about 400 feet south of E 1<sup>st</sup> Street. The federal project also included a 3,000-foot transition section on the south end that would terminate near Prospect Ave.

The federal project, which was authorized in 2001, was formulated using shoreline change data developed by the NC Division of Coastal Management (NCDQM) for the time period 1945 to 1995. Consequently, over 18 years has elapsed since the USACE plan was formulated. CPE-NC will update the shoreline change data for the TOWN to include the entire ocean shoreline within the town limits as well as approximately 5,000 feet of shoreline north and south of the town limits.

Information that will be used to update shoreline changes would include an assessment of the applicability of the new updated shoreline change rates published in 2011 by NCDQM. This latest update was based on shoreline changes between 1940 and 2009. CPE-NC will also use LiDAR (Light Detection and Ranging) survey data collected by the US Geological Survey that covers the time period from 1996 to 2011 as well as previous beach profile surveys obtained by the USACE and the 2012 beach profile survey conducted for the TOWN by CPE-NC.

The reassessment of the shoreline history of the TOWN will direct the formulation of shoreline management plans to the sections of town that appear to be most vulnerable to

**EXHIBIT A:  
SCOPE OF PROFESSIONAL SERVICES  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA  
PERMITTING AND ENGINEERING SUPPORT FOR NON-FEDERAL BEACH  
NOURISHMENT PROJECT**

long-term erosion. This could extend the recommended project coverage beyond that included in the federal project.

The other aspect to be included in the plan formulation will be a general assessment of the present-day vulnerability of development to damage due to coastal storms. This assessment would include nor'easters as well as tropical events. Again, the USACE did a complete assessment of storm damage vulnerability in formulating the federal project; however, the USACE analysis is over 15 years old and does not represent development changes or the existing proximity of structures to the shoreline.

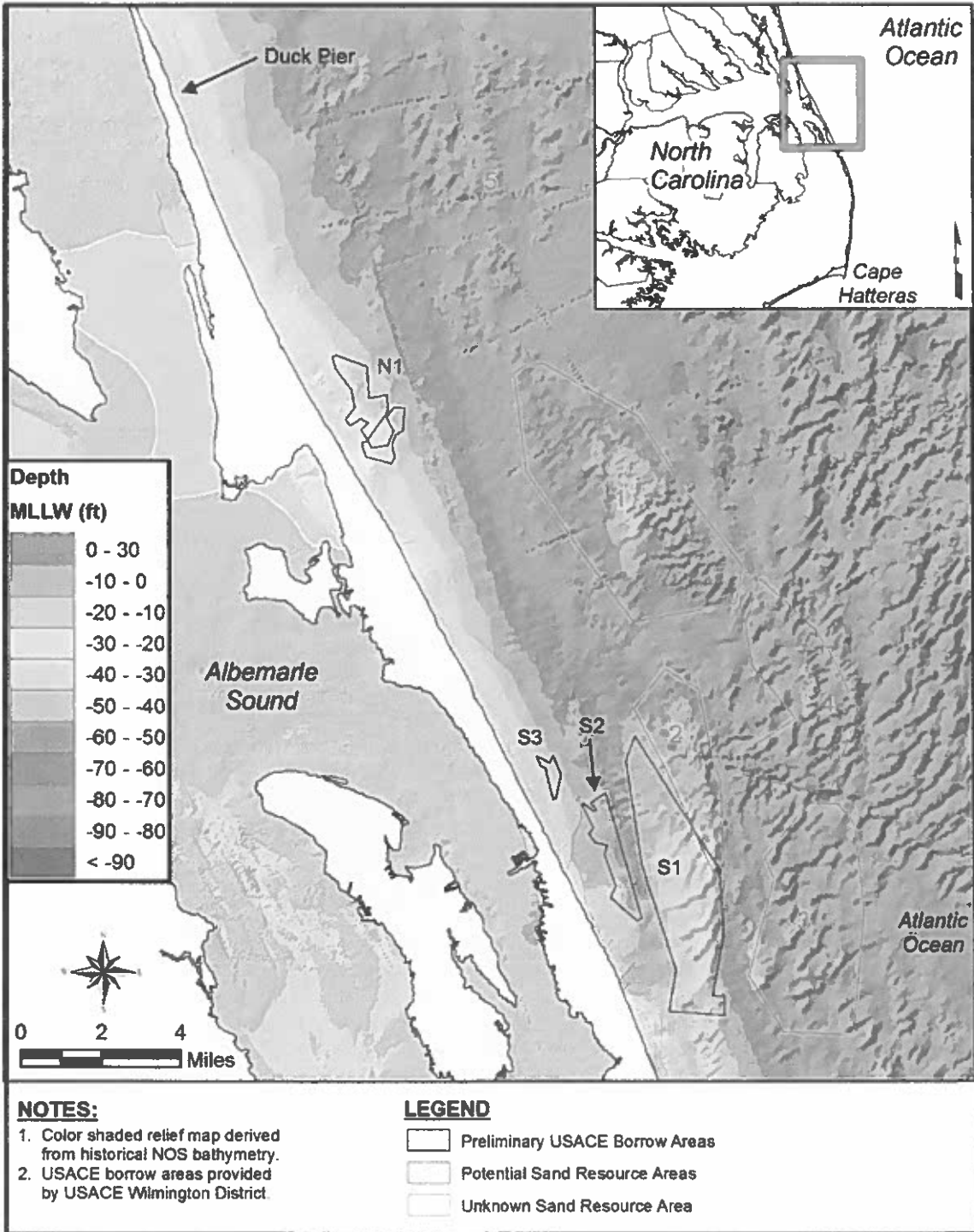
The nature of the storm vulnerability analysis we propose is not of the same scale that the USACE must do to evaluate federal interest in providing storm damage protection. Rather, our approach will focus on damage potentials associated with storms having return intervals ranging from 1 year to 50 years. For this assessment, we will use the USACE storm shoreline change model SBEACH which is the same model the USACE used in formulating the federal project. Most of the storm characteristics we will use in the analysis will be drawn from the previous work by the USACE.

Once the storm damage potential is identified for each storm return interval, beach fill plans will be evaluated to determine the size of a project needed to reduce storm damages of each storm to an acceptable level. Each alternative beach nourishment plan evaluated will include its cost for initial construction as well as periodic nourishment. The end result of the analysis will be a range of potential projects and their associated costs compared to the level of damage reduction likely to be achieved. The results will also provide an estimate of the risk of future damages that still could occur following the implementation of each alternative. Given the financial capabilities for the TOWN, this information will provide a basis for determining the level of risk deemed appropriate by the TOWN to meet its shoreline management objectives.

**TASK 4: Reconnaissance Borrow Area Survey**

A 2001 study conducted by Boss and Hoffman identified four target areas with potential for sand resources offshore Northern Dare County. These four sites, which may contain up to 77 million cubic yards, are located outside State Waters (beyond the 3-mile limit). The sites are located generally offshore of the Town of Kill Devil Hills and the Town of Nags Head and are shown in Figure 1 (offshore sites outlined in red). As part of an Erosion and Shoreline Management Feasibility Study, conducted for the Town of Duck in 2012/2013, CPE-NC recommended an exploratory reconnaissance survey to verify the quality and quantity of the sand located in area 1 as shown in Figure 1. Likewise, consideration of this borrow source has been recommended to the Town of Kill Devil Hills recently. Utilization of this borrow source for either community, which is approximately 6 miles closer to the project location than other borrow sites being considered, could reduce the cost of the projects significantly.

**EXHIBIT A:  
SCOPE OF PROFESSIONAL SERVICES  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA  
PERMITTING AND ENGINEERING SUPPORT FOR NON-FEDERAL BEACH  
NOURISHMENT PROJECT**



**EXHIBIT A:  
SCOPE OF PROFESSIONAL SERVICES  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA  
PERMITTING AND ENGINEERING SUPPORT FOR NON-FEDERAL BEACH  
NOURISHMENT PROJECT**

Figure 1. Map depicting offshore sand sources identified in the Boss and Hoffman, 2001 (1 – 4) and additional area of interest identified by CPE-NC (5).

CPE-NC will conduct four (4) days of jet probing in the vicinity of Area 1 and 5 shown in Figure 1. Jet probe surveys involve geologists who are proficient in SCUBA diving, penetrating a graduated water pressure pipe into the ocean bottom and making observations as it passes through sediment layers. A geologist will control the jet probe at the ocean floor and a support diver will handle the upper end of the probe to hold it upright against current. The geologist on the bottom will observe the graduated scale on the probe and by the “feel” of the objects it encounters makes mental notes of the depths of each change in texture. After the dive, these notes are incorporated into a field log.

The diver-geologist can distinguish layers such as shell, rubble, sand, peat, clay and rock using this technique. CPE-NC will use this survey to identify the depth and thickness of potentially suitable sediments in the region that could be used as an offshore borrow source.

Through initial coordination with BOEM, CPE-NC has determined that a *Permit to conduct geological prospecting for mineral resources in the outer continental shelf related to Minerals other than oil, gas, and sulfur* (BOEM-0134) is required to conduct the jetprobe survey of the areas in federal waters. CPE-NC will prepare the permit application, submit the application to BOEM and coordinate with the agency on requests for additional information. BOEM has stated that the anticipated review period for this permit is 30 days. Upon obtaining said permit, CPE-NC will conduct the jetprobe surveys within the identified areas.

Following the completion of TASK 4, CPE-NC will provide the TOWN with a letter report describing the results of the jetprobe surveys. CPE-NC will also consult with permitting and environmental resource agencies to verify permitting assumptions and include guidance provided by the agencies in the letter report. The level of effort included in this proposal is for reconnaissance investigations only and WILL NOT satisfy the requirements for permitting a borrow source. The letter report will include recommendations on future borrow area investigations to collect the level of geophysical and geotechnical data required to permit a borrow area. Likewise, CPE-NC will provide the TOWN with a proposal to conduct the recommended investigations required to permit the recommended borrow area.

**EXHIBIT B:  
LIST OF DELIVERABLES  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA  
PERMITTING AND ENGINEERING SUPPORT FOR NON-FEDERAL BEACH  
NOURISHMENT PROJECT**

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

- Monthly progress reports;
- Letter report describing the results of the reconnaissance offshore sand source survey;
- Engineering Report;
- Final Environmental Assessment;
- Final Essential Fish Habitat Assessment;
- Final Biological Assessment;
- Major CAMA Permit application; and
- Dept. of the Army Permit application

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

Monthly Progress Reports: CPE-NC will provide the Town with a 1 page, summary of the project status via e-mail approximately every 30 days during the course of the anticipated 24 month contract period. The letter will describe activities completed throughout the month and update the anticipated schedule of milestones completion as appropriate.

Letter Report Describing the Results of the Reconnaissance Offshore Sand Source Survey: Following the completion of Task 4, CPE-NC will provide the Town with a letter report describing the results of the jetprobe surveys. CPE-NC will also include in the letter guidance provided by the agencies through coordination regarding permitting of proposed borrow areas. The letter report will include recommendations on future borrow area investigations to collect the level of geophysical and geotechnical data required to permit a borrow area. Likewise, CPE-NC will provide the TOWN with a proposal to conduct the recommended investigations required to permit the recommended borrow area. Barring any unforeseen circumstances, the letter will be provided within 90 days following written authorization to proceed.

Engineering Report: An engineering report will be provided to the Town as an appendix to the Environmental documentation developed to support a permit decision. The engineering report shall include the results of the shoreline change analysis, the storm vulnerability analysis (SBEACH), record of plan formulation, and final description of the proposed beach design. Barring any unforeseen circumstances, the Engineering Report will be provided along with other final deliverables within 24 months following written authorization to proceed.

Final Environmental Assessment (EA): An EA under NEPA is a concise public document that provides sufficient evidence and analysis for determining whether the U. S. Army Corps of



**EXHIBIT B:  
LIST OF DELIVERABLES  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA  
PERMITTING AND ENGINEERING SUPPORT FOR NON-FEDERAL BEACH  
NOURISHMENT PROJECT**

Engineers should issue a Finding of No Significant Environmental Impact (FONSI) or prepare an Environmental Impact Statement (EIS). It is designed to help public officials make decisions that are based on an understanding of the human and physical environmental consequences of the proposed project and take actions, in the location and design of the project, that protect, restore and enhance the environment. Barring any unforeseen circumstances, the EA will be provided along with other final deliverables within 24 months following written authorization to proceed.

Final Essential Fish Habitat (EFH) Assessment: The EFH assessment is utilized by the National Marine Fisheries Service (NMFS) to ensure that the project will identify and protect important marine and estuarine fish habitat in accordance to the amended Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), which was enacted by the U.S. Congress to protect marine fish stocks and their habitat, prevent and stop overfishing and minimize bycatch. Congress defines Essential Fish Habitat (EFH) as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." The MSFCMA requires that EFH be identified for all fish species federally managed by the Fishery Management Councils (FMCs) and the NMFS. This document will evaluate the potential impacts to the various essential fish habitats within the designated Permit Area. Barring any unforeseen circumstances, the EFH will be provided along with other final deliverables within 24 months following written authorization to proceed.

Final Biological Assessment (BA): The purpose for the development of the BA is to document analyses for actions that may affect federally listed species which will serve to satisfy the U.S. Fish and Wildlife Service (USFWS). The document is prepared for the Section 7 process to determine whether a proposed major construction activity under the authority of a federal action agency is likely to adversely affect listed species, proposed species, or designated critical habitat. The Town is required to determine whether the project related actions may affect listed or proposed species and designated and proposed critical habitat. Barring any unforeseen circumstances, the BA will be provided along with other final deliverables within 24 months following written authorization to proceed.

Major CAMA Permit Application: The Scope of Work includes the development and submittal of the complete Major CAMA permit application directly to the NC Division of Coastal Management. Barring any unforeseen circumstances, the Major CAMA Permit Application will be provided along with other final deliverables within 24 months following written authorization to proceed.

Dept. of the Army Permit Application: The Scope of Work includes the development and submittal of the Dept. of the Army Individual Permit Application directly to the U.S. Army Corps of Engineers. Barring any unforeseen circumstances, the Dept. of the Army Individual

**EXHIBIT B:  
LIST OF DELIVERABLES  
TOWN OF KILL DEVIL HILLS, NORTH CAROLINA  
PERMITTING AND ENGINEERING SUPPORT FOR NON-FEDERAL BEACH  
NOURISHMENT PROJECT**

Permit Application will be provided along with other final deliverables within 24 months following written authorization to proceed.

EXHIBIT C  
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: COASTAL PLANNING & ENGINEERING OF NORTH CAROLINA, INC. ("CPE-NC")** agrees to perform for the undersigned **CLIENT, engineering and consulting ("Services")** described in attached Proposal dated 5/9/2013 as revised 5/17/2013
2. **FEES, INVOICES AND PAYMENTS:** The Services will be performed on a fixed price basis for: Three Hundred Twenty Two Thousand & Seven Hundred Eighty Dollars (\$322,780.00). Invoices will be submitted by CPE-NC no more frequently than monthly in accordance with Attachment B Payment Schedule, with payment due upon CLIENT'S receipt of invoice. Payment shall be in U.S. Dollars. A service charge equal to one and one-half percent (1 1/2 %) per month, or the maximum rate permitted by law, whichever is less, will be added to all accounts which remain unpaid for more than thirty (30) calendar days beyond the date of the invoice. Should there be any dispute as payments to be made on a percent complete basis to any portion of an invoice, the undisputed portion shall be promptly paid.
3. **CLIENTS COOPERATION:** To assist CPE-NC in performing the Services, CLIENT shall (i) provide CPE-NC with relevant material, data, and information in its possession pertaining to the specific project or activity, (ii) consult with CPE-NC when requested, (iii) permit CPE-NC reasonable access to relevant project sites, (iv) ensure reasonable cooperation of CLIENT's employees in CPE-NC's activities, and (v) notify and report to all regulatory agencies as required by such agencies.
4. **CONFIDENTIALITY:** In the course of performing Services, to the extent that CLIENT discloses to CPE-NC, business or technical information that CLIENT clearly marks in writing as confidential or proprietary, CPE-NC will exercise reasonable efforts to avoid the disclosure of such information to others. Nonetheless, CLIENT shall treat as confidential information and data furnished to it by CPE-NC in connection with this Agreement to the extent it includes CPE-NC'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

©2012 Coastal Planning & Engineering of North Carolina, Inc.  
All Rights Reserved

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; provided, however, upon service of such process, the recipient thereof shall use reasonable efforts to notify the other party and afford it an opportunity to resist such process.

5. **DELAYS AND CHANGES IN CONDITIONS:** If CPE-NC 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 that CLIENT is responsible for; (ii) changes in the scope of the work requested by CLIENT; or (iii) delay authorized by CLIENT and agreed to by CPE-NC, then 1) the time for completion of the Services shall be extended based upon the impact of the delay, and 2) CPE-NC shall receive an equitable compensation adjustment. Any such equitable adjustment shall be based on CPE-NC's then current Time and Material Rates, as may be provided in a Rate sheet attached hereto.

Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any acts of force majeure (such as fires, floods, riots, and strikes).

6. **INSURANCE:** CPE-NC 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 prior to beginning work. If the CLIENT requires further insurance coverage, CPE-NC will endeavor to obtain said coverage, and CLIENT shall pay any extra costs therefor.
7. **INDEMNITIES:** CPE-NC shall defend, indemnify and hold harmless CLIENT from and against loss or damage to tangible property, or injury to persons, to the extent arising from the negligent acts or omissions or willful misconduct of CPE-NC, its borrowed servants and their employer and its subcontractors, and their respective employees and agents acting in the course and scope of

their employment. CLIENT shall defend, indemnify and save harmless CPE-NC (including its borrowed servants and their employers and its and their affiliated companies and their officers, directors, employees, and agents) from and against, and any indemnity by CPE-NC shall not apply to, loss, damage, injury or liability arising from the acts or omissions of CLIENT, its contractors, and their respective subcontractors, employees and agents, or of third parties.

**8. RESERVED**

**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 twenty (20) days' written notice to the other party. Upon such termination, CLIENT shall pay CPE-NC for all Services performed hereunder up to the date of such termination. In addition, if CLIENT terminates, CLIENT shall pay CPE-NC all reasonable costs and expenses incurred by CPE-NC in effecting the termination, including, but not limited to non-cancelable commitments and demobilization costs.

**11. ASSIGNMENT:** Neither CPE-NC 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.

**12. MISCELLANEOUS:**

**a. ENTIRE AGREEMENT, PRECEDENCE, ACCEPTANCE MODIFICATIONS:** The terms and conditions set forth herein constitute the entire understanding of the Parties relating to the provisions of the Services by CPE-NC to the CLIENT. All previous proposals, offers, and other communications relative to the provisions of these Services by CPE-NC, 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 and Attachments A and B shall govern. CLIENT may accept these terms and conditions by execution of this Agreement or by authorizing CPE-NC to begin work. Any modifications or revision of any provisions hereof or any additional provisions contained in any purchase order, acknowledgement or other document issued by the CLIENT is hereby expressly objected to by CPE-NC 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

©2012 Coastal Planning & Engineering of North Carolina, Inc.

All Rights Reserved

any litigation, the Prevailing Party shall be entitled to recover their reasonable attorneys fees and costs as allowed by the Court.

**c. WAIVER OF TERMS AND CONDITIONS -** The failure of CPE-NC or CLIENT in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in the Agreement or the waiver by CPE-NC 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.

**13. USE OF DOCUMENTS:**

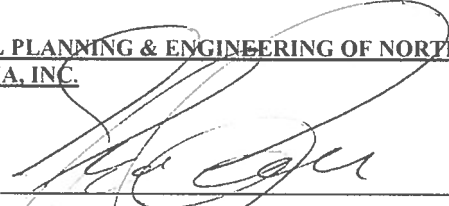
The project information document, reconnaissance borrow area survey, environmental engineering and design, assessments, reports and recommendations, and other information produced shall be the property of CLIENT and may be used by CLIENT for any purpose it deems appropriate. If used for a purpose other than that contained in the Kill Devil Hills Permitting and Engineering Support for Non-Federal Beach Nourishment Project Scope of Professional Services Project Information Document included in Attachment A, then CPE-NC will have no liability for any use other than those stated in the document.

///  
///  
///  
//  
///  
///  
///  
///  
///  
///  
///

CLIENT and CPE-NC agree to the foregoing and have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

Executed on June 25, 2013.

**COASTAL PLANNING & ENGINEERING OF NORTH CAROLINA, INC.**

By (Sign): 

Print Name: Thomas J. Campbell

Title: President

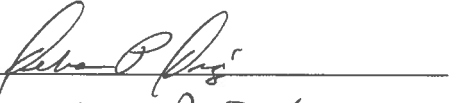
Address: 2481 NW Boca Raton Blvd.  
Boca Raton, FL 33431

Phone: 561-391-8102

Fax: 561-391-9116

E-mail: thomas.campbell@cbi.com

**CLIENT: TOWN OF KILL DEVIL HILLS**

By (Sign): 

Print Name: Debora P. Diaz

Title: Town Manager

Address: P.O. Box 1719  
102 Town Hall Drive  
Kill Devil Hills, NC 27948

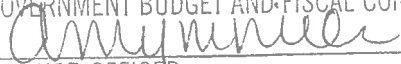
Phone: 252.449.5300

Fax: 252.441.7946

E-mail: dehdic@kdhnc.com  
greg@kdhnc.com



THIS INSTRUMENT HAS BEEN PREAUDITED  
IN THE MANNER REQUIRED BY THE LOCAL  
GOVERNMENT BUDGET AND FISCAL CONTROL ACT.

  
FINANCE OFFICER