



621 Hillsborough Street
Suite 500
Raleigh, NC 27603
919. 361. 5000

TNH22001.27

September 27, 2024

Amy Miller
Deputy Town Manager
Town of Nags Head
PO Box 99
Nags Head, NC 27959

**RE: Town of Nags Head Estuarine Shoreline Management Plan – Living Shoreline Design
Nags Head Woods Preserve & Villa Dunes Drive and West Soundside Road
Nags Head, North Carolina
TNH22001.27**

Dear Ms. Miller,

Project Understanding

The proposed project will advance the design of two living shoreline projects identified as priority in the Town of Nags Head Estuarine Shoreline Management Plan. These two living shoreline projects will proactively support the Town's resiliency improvement process of reducing shoreline erosion and provide protection to community infrastructure. The services proposed will provide site analysis and engineering and design of two community-prioritized estuarine marsh restoration and shoreline stabilization sites, located at Nags Head Woods Preserve & Villa Dunes Drive and West Soundside Road. The alternatives evaluated will integrate nature-based solutions (NBS) and include the of restoration of brackish marshes and construction of offshore living breakwaters to deflect wave energy and encourage the formation of sub-aquatic habitats. The NBS will also consider anticipated climate change impacts including sea level rise and erosion that threatens the Town-owned neighborhood access roads at these locations.

The project team will consist of Biohabitats of North Carolina (BioNC) as the project manager, design lead, and community engagement lead. Moffatt and Nichol (M&N) will lead coastal hydrodynamic modeling, structural design, and state and federal regulatory permitting. M&N will provide support in field studies, basis of design report and community engagement. Coastal Engineering and Surveying (CES) will provide topographic and bathymetric surveying. Catlin Engineers and Scientist (CAT) will provide geotechnical services. McAdams will provide general grant reporting support, team coordination, and grant administration, and will work with the project team and Town to facilitate completion of the project.

Assumptions

This proposal is based on the following assumptions:

- Any public notifications and public engagement will be coordinated through the Town of Nags Head.



Proposed Services + Fees

We propose the following services (Alphanumeric task numbers are for internal coding purposes):

Task 1 - General Project Administration

PROJECT ADMINISTRATION:

Work under this task will be completed by McAdams and includes the following major tasks and components:

- | Coordination and assistance to Town for duration of project;
- | Periodic project updates and status reports;
- | General project management and administration throughout duration of contract; and
- | Participation in periodic virtual meetings and discussions with Town and project team.

PROJECT COORDINATION + MANAGEMENT:

Work under this task will be completed by Biohabitats:

- | Project kickoff meeting with Town and invited stakeholders;
 - BioNC will lead a kickoff team meeting with the Town of Nags Head (Town) and invited stakeholders to confirm overall project goals, desired outcomes, data sources, schedule, lines of communication, billing protocols and deliverables. Following the kick-off meeting, the project team will visit the sites with the Town to review opportunities, areas of concern, property access, boating access, critical habitat, aesthetics, etc. Photos of the site will be collected. BioNC will prepare and distribute meeting minutes.
- | Progress Meetings:
 - BioNC will lead monthly progress meetings (virtual) with the Town and design team to review the project progress and schedule as well as discuss concerns or potential challenges associated with upcoming work. BioNC will prepare and distribute meeting minutes.
- | Team Coordination Meetings:
 - BioNC will lead internal bi-weekly project team coordination meetings to review work progress, scheduling and deliverables. BioNC will maintain a SharePoint site to store documents and coordinate communication.
- | Monthly Status Reports:
 - As part of monthly billing, BioNC will prepare a monthly status report outlining work accomplished during the billing period, schedule updates, issues-at-hand, and, if necessary, additional work efforts.
- | Grant Funding Support:
 - In support of grant reporting requirements, BioNC will provide the Town quarterly updates on the project status and schedule. The Town will be responsible for the preparation of the grant reports and communicating directly with DEQ.
- | Project Debrief and Next Steps:
 - At the conclusion of the project, BioNC will meet with the Town to debrief on our Team's performance and review next steps for preparing bidding documents, contractor procurement and construction.

I Task 1 Deliverables:

- Meeting minutes (as needed);
- Monthly status reports (twelve); and
- Quarterly grant reporting updates (up to four updates, 1-2 pages each).

Task 2 - Data Collection, Field Studies + Coastal Modeling

I Data Collection + Review:

The BioNC Team will collect and review readily accessible data relevant to supporting the design and permitting requirements. This review of assembled data will identify data gaps in coverage that may need to be collected during field surveys and modeling.

I Field Surveys:

The BioNC team will perform the following field surveys to collect data relevant to supporting the design and permitting requirements:

- M&N will conduct a survey of benthic habitats (submerged aquatic vegetation, shellfish and reefs) in compliance with regulatory requirements;
- BioNC will conduct a field characterization of the shoreline and nearshore conditions, visually identifying vegetation communities, shoreline infrastructure (bulkheads, piers, docks, storm drains, erosion control features, etc.) and nearshore and shoreline habitat. BioNC will also identify and collect biological benchmark data to be used in establishing elevations for design features;
- BioNC will perform a jurisdictional non-coastal wetland delineation of the study area. Jurisdictional non-coastal wetlands, if present, will be flagged, surveyed, and mapped. The delineation will be used to inform the placement of design features as well as comply with regulatory permits;

I Cultural and Historic Resources Assessment;

A desktop analysis will be conducted to evaluate potential historical resources within the project area. Early coordination will be conducted with the State Historic Preservation Office (SHPO) to ensure no impacts with cultural resources from project implementation.

I Property + Topographic/Bathymetric Survey:

Coastal Engineering and Surveying (CES) will perform the following:

- Boundary research of properties adjoining project area;
- Provide mailing lists/contact information for adjoining property owners;
- Obtain boundary evidence of adjoining properties to establish accurate boundary line locations;
- Perform topo and bathymetric survey of the areas outlined on email attachment provided on 8/16/202;
- Bathymetric survey information will be comprised of single beam high frequency transducer readings with RTK capabilities, at 100 ' transect spacing, and based on NAVD88 Datum. Topographic survey readings will utilize RTK and be based on NAVD88 vertical datum and NAD83 (2011) horizontal datum;
- Prepare a survey map which will include physical locations of docks, bulkheads, walls, or other structures within the project area, topographic and bathymetric survey information, and property lines/information for all adjoining properties; and
- Provide easement exhibits for any lots that will be affected by temporary construction accesses or staging.

I Geotechnical Investigation

Catlin Engineers & Scientists (CAT) will advance a total of five (5) Standard Penetration Tests (SPT) to depths of approximately 50 feet below bed of the Pamlico Sound at or near the seven (7) proposed wave attenuator sites. The SPT borings will be completed in general accordance with ASTM Method D1586, via a barge mounted CME 45-B drill rig.

Representative soil samples will be collected from these borings and submitted to CAT's soil lab in Wilmington, NC, for classification. CAT will locate all boring locations and elevations utilizing survey grade GPS technology.

CAT will prepare a Subsurface Exploration Report including, but not limited to, the following:

- General description of site and subsurface conditions.
- Summary of testing procedures and results.
- SPT logs.
- Site map with boring locations.
- Geologic setting.
- Soil properties including USCS classification, consistency/density, lateral earth pressure coefficients (at-rest/active/passive), and sliding friction coefficients (as applicable).
- Foundation type and design recommendations.
- Net allowable bearing capacity for shallow foundations.
- Allowable capacities for deep foundations (if deemed necessary).
- Anticipated total/differential settlement estimates for shallow foundations.
- Ground improvement considerations.

ALLOWANCE #1 - Based on recent observations of the project site's substrate conditions, BioNC is assuming that there will be minor inconsistencies in the penetration tests between sampling locations. If there proves to be sufficient inconsistency between penetration tests, then BioNC may direct Catlin to perform up to two (2) additional penetration tests, in accordance with the allowance fee, to further characterize the substrate.

I Coastal Hydrodynamic Modeling

M&N will extract results from their existing hydrodynamic and wave model of the area to establish design criteria for the project elements. Additionally, sediment transport will be qualitatively modeled for typical wind events to determine / confirm transport directions / patterns in the immediate vicinity of the project elements. A brief memo for incorporation into the BOD will be prepared for both efforts.

I Task 2 Deliverables

- Benthic habitat, jurisdictional wetland delineation & cultural and historic resource assessment (included in regulatory permit application)
- Field characterization and biological benchmarks (included in the Basis of Design Report)
- Paper copies and pdf digital transfers of the survey map, signed and sealed by an NC licensed surveyor.
- Paper copies and pdf digital transfers of easement exhibits, signed and sealed by an NC licensed surveyor.
- .dwg file of survey map (if requested)
- Geotechnical investigation analysis (included in the Basis of Design Report)
- Coastal hydrodynamic modeling memorandum (to be included in the Basis of Design Report)

Task 3 - Basis of Design

For the development of a DRAFT Basis of Design (BOD) Report, BioNC, with support from M&N, will compile the information from Task 2 to prepare a BOD report that will include both sites. The BOD will summarize the design decisions, assumptions, and specifications that will be used to develop the schematic design. Target level sill/reef and marsh elevations, design wave and wave attenuation criteria, and water level criteria will be presented in the BOD. The BOD will support the permit application process in Task 5 and will include the following:

- Coastal hydrodynamic modeling memorandum
- Compilation of local wind-wave data, as available
- Desktop analysis of wind-generated wave environment
- Estimation of boat wake
- Water level information
- Sea level change scenarios
- Estimated settlement of substrate
- Benthic habitat impacts
- Targeted elevations for NBS
- Construction access requirements
- Potential risks
- Information gaps

BioNC will submit a draft copy (PDF) of the BOD report to the Town for review.

- | Milestone Review #1 (virtual) – BioNC and M&N will lead a meeting with the Town and invited stakeholders (to be selected by the Town) to review the draft BOD report, address questions, discuss risks and review information gaps. BioNC will prepare and distribute meeting minutes.

FINAL Basis of Design Report – BioNC, with the support of M&N, will make agreed upon revisions to the report and submit a final BOD report (PDF) to the Town, which will serve as the basis for Schematic Design.

- | Task 3 Deliverables
 - Draft BOD report (PDF)
 - Milestone Review #1 meeting minutes
 - Final BOD report (PDF)

Task 4 - Schematic Design (30%)

BioNC and M&N will develop draft schematic designs for each of the two sites; Nags Head Woods Preserve & Villa Dunes Drive and West Soundside Road. The schematic design will build off the concepts developed for the Estuarine Shoreline Management Plan, the BOD report, and integrate geotechnical and geophysical results and stakeholder input. Design features will focus on the use of NBS to reduce shoreline erosion while maintaining maritime access to private docks, piers and Sound access points. NBS may include the restoration of brackish marshes and various types of offshore intertidal and subtidal living breakwaters (oyster reefs, fish reefs, marsh plantings) to deflect wave energy and encourage the formation of sub-aquatic habitats. Layout considerations for the design features will include water quality and circulation, adaptation to sea level rise, wave energy impact and dampening, and focused shoreline stabilization. The coastal hydrodynamic modeling performed in Task 2 will be used to guide the schematic design. M&N will rerun the coastal hydrodynamic modeling to check that the proposed schematic design meets project engineering goals. The schematic design for each site will consist of

scaled illustrative drawings including general layout of design features, typical cross sections, select conceptual details, general notes, labels and legend. BioNC will prepare a preliminary opinion of probable construction costs for each site.

- I Milestone Review #2 (virtual) – BioNC & M&N will lead a meeting with the Town and invited stakeholders to review and solicit feedback on the draft schematic design. Comments and revisions will be incorporated into the Final Schematic Design. BioNC will prepare and distribute meeting minutes.

Final Schematic Design (30%) – BioNC will prepare a final schematic design (30%) based on feedback from the Town, community workshop and field visits.. BioNC will update the preliminary opinion of probable construction costs for the final schematic design.

- I Task 4 Deliverables
 - Draft and Final Schematic Design (PDF)
 - Preliminary estimation of probable construction costs for each site
 - Milestone Review #2 meeting minutes

Task 5 - Regulatory Permitting & Agency Coordination

M&N will provide regulatory guidance on CAMA, 401 Water Quality Certification, and USACE regulatory processes, including the development and submittal of the appropriate permit applications and associated technical documents required for state and federal agency reviews and consultations.

Permit Application Preparation - M&N will compile available biological/ecological data and field assessment analyses performed by the team and other sources and integrate the data into the BOD report. The BOD report will be used to support the narrative to be included with state and federal agency permit applications, as required by the Joint CAMA/Corps review.

Pre-Application Meeting - M&N will facilitate one pre-application meeting with regulatory representatives of the North Carolina Division of Coastal Management, the North Carolina Division of Water Resources, and the USACE, as well as other interested resource agencies, to discuss the proposed shoreline features and identify any concerns the agencies may have prior to submittal of the final Joint Permit application.

Joint Permit Application – M&N will prepare and submit a joint permit application. Once the application is submitted, M&N will assist in responding to agency requests for additional information. Our team has significant experience in problem resolution during permit application review and will use that expertise and relationships with North Carolina regulatory and resource agencies to satisfy any agency concerns that may arise during project and permit development.

Regulatory Feedback -Comments received from regulatory agencies on the schematic design prior to the issuance of the final design documents will be addressed in the BOD report and incorporated into the final design. Completion of this task is not contingent on receiving approved permits.

- I Task 5 Deliverables
 - Completed & Submitted Regulatory Applications
 - Draft & Final Essential Fish Habitat Assessment and Biological Assessment
 - Agency Meeting Minutes
 - Email Status Updates on permits

Task 6 – Design Documents (60%)

BioNC, with support from M&N will complete the necessary design and engineering to produce 60% design documents, including drawings and an outline of specifications. The design drawings will include location and vicinity maps, standard note sheets, grading and site plans, breakwater and living shoreline design and installation, planting and revegetation plans, erosion and sediment control plans, and representative cross sections. Anticipated regulatory requirements will be incorporated into the design documents. BioNC will prepare a construction quantities list and update the opinion of probable construction costs. An electronic copy of the design documents will be provided to the Town for review and comment.

- I Milestone Review #3 (virtual) – BioNC will lead a meeting with the Town and invited stakeholders to review and answer questions regarding the 60% design documents. Revisions will be addressed in a future phase/contract in which 90% design plans will be developed. BioNC will prepare and distribute meeting minutes.

Special Condition: It is anticipated that the Design Documents (60%) will be completed prior to the issuance of all state and federal permits to remain compliant with grant funding scheduling conditions. Design changes that result from regulatory review following the submittal of the Final Design Documents will be addressed in the 90% Design Documents under a separate contract.

60% Design Documents Submittals – BioNC will transmit to the Town digital copies of the 60% Design Documents, the topographic and bathymetric surveys, geotechnical results, technical documents and other material used to support the design and permit applications.

- I Task 6 Deliverables
 - Agency Meeting Minutes
 - 60% Design Documents (AutoCAD and PDF)
 - Topographic and bathymetric surveys and other material used to support the design and permit applications.
 - Construction quantities schedule (PDF)
 - 60% design opinion of probable construction cost (PDF)
 - Milestone Review #3 meeting minutes

Task 7 – Community Engagement

BioNC, with support from M&N, will support the Town in providing community engagement through Schematic and 60% design levels. M&N licenses PublicInput, a collaborative public engagement platform that streamlines the process of engaging with constituents and makes it easy for residents to participate on their own time. The platform centralizes engagement efforts across various modes of communication, collects and processes data from respondents, and streamlines the process of engaging and re-engaging a constituency throughout the span of the planning effort. PublicInput also has valuable tools for filtering and analyzing responses, allowing our team to filter by geography, demographics, and respondent preferences and quickly generate nuanced analyses more efficiently than with public surveys alone. The platform will be instrumental in supporting the Town with comment collection, analysis, and response from the community. The platform can host the virtual component of virtual or hybrid public meetings.

Task 7 - Support for Community Engagement

- M&N, with support from BioNC, will lead an interactive in-person community workshop (2-3 hours) to present and solicit feedback on the Draft Schematic Plan. The workshop will consist of a Power Point presentation followed by a listening session to gather feedback and address questions. Up to three (3) graphic boards depicting the schematic design along with conceptual details will be prepared for the workshop.
- Following the workshop, M&N +BioNC will participate in a half-day of in-person field meetings with property owners and stakeholders to review site conditions, discuss project elements, construction methodologies and project benefits.
- Take-aways from the community engagement session and in-person field meetings will be documented and summarized in a brief memorandum.
- BioNC + M&N will participate in one virtual public meeting to present and solicit feedback on the 60% design documents. Comments will be noted and discussed with the Town. Minor revisions will be addressed in a final 60% draft. More substantial revisions will be incorporated into the 90% design documents under a separate contract.
- BioNC + MN will participate in one Town Council meeting to present findings of the project at the 60% design level.
- M&N, with support from BioNC, will work with the Town to provide a portal on the Town’s existing web site to serve as a public facing information page for the project. The portal will include information about the project, project schedule, public-facing documents, recordings of the community engagement & virtual public meetings and a comment form to solicit feedback. The Town will be responsible for programing , updating and maintaining the web site.

Special Condition: The Town will lead the organization and take responsibility for the logistics of the public engagement session, the field meetings and the virtual Town Council Meeting, including scheduling, arranging for the venue(s), site visits, advertising, food & drink, security, etc. M&N + BioNC will provide guidance and consultation to the Town.

I Task 7 Deliverables

- Community workshop presentation materials, including a PowerPoint presentation & up to 3 project graphic boards.
- Brief memorandum documenting the community workshop and field meetings.
- Notes from the Town Council meeting
- Web portal information as described above.

Contingencies

This proposal includes a \$6,500 allowance for project contingencies and additional tasks that will be identified during the course of the primary scope of work. Example tasks are included below for general information. Additional services may be completed using this contingency with written approval from the Town.

Supplemental Services

Supplemental services are not included in the scope of work for this contract. These services may be performed at the Owner's request with compensation and potential schedule adjustments. Supplemental services that the Town may choose to add to the scope of work include, but are not limited to the following items:

- On-site meetings with local, State, or Federal agencies not included in the scope of work.
- Additional field studies to identify rare, threatened or endangered species; contaminated soils; or water quality sampling.
- Additional surveying or geotechnical investigations due to unforeseen changes in site conditions from weather events and natural and manmade disturbances.
- Additional regulatory coordination beyond the 12-month schedule proposed below, including permit application tracking, responding to requests for additional information and attending meetings requested by the regulatory agencies.
- Supplemental design and engineering work required to meet the requirements of regulatory or funding agencies that are identified after the completion of the 90% final design documents.
- Additions to an engineering report or other document to update or revise original recommendations.
- Revision of designs, drawings, and specifications to incorporate changes arising from Value Engineering review.
- Preparation of a Benefit-Cost-Analysis (BCA).
- Preparation technical specifications or bid documents (100% design documents) and bidding support.
- Securing temporary construction easements.
- Performing construction administration.
- Performing post construction monitoring.
- Producing or hosting a project web site.

Assumptions

The following assumptions have been made in the generation of this proposal's scope and fee.

- Available background information helpful to the goals of this project will be provided to the BioNC team within 2 weeks of project award. Non-digital format documents will be scanned and sent, or copies will be provided to the team during the kick-off meeting.
- Unencumbered access to the project sites, shoreline and adjoining properties. The Town shall be responsible for notifying and obtaining permission from the property owners to access the shoreline if needed. Drone photos & videos may be collected when access to certain properties is not feasible. The Town will be notified at least 5 days prior to an anticipated site visit to determine availability of boat-site access.
- All fees and costs associated with the community workshop and permit application will be the responsibility of the Town and are not included within the proposed fee.
- To remain on schedule, the review period of deliverables by the Town has been assumed to be 1 week.

- Additional drilling requested or required in excess of proposed items may incur additional drilling charges, and may also incur additional labor charges for mobilization, field supervision, creation of boring logs, and additional engineering evaluation time.
- If unusual conditions are encountered or suspected, such as obstructions, unstable soils, existing drainage channels where unstable soils may occur, or any other conditions which may require changes to the depth or location of borings, CATLIN will immediately contact the Client for direction. Additional borings or drilling footage required in excess of proposed borings/footage may incur additional charges and/or a second phase of the geotechnical investigation to perform additional services.
- If contaminated material is encountered during drilling activities, field work will stop, and the client will immediately be notified. Costs associated with handling and disposal of contaminated materials are not included in this cost estimate.
- Inability to access the location may result in additional charges for mobilization and field crew travel time.

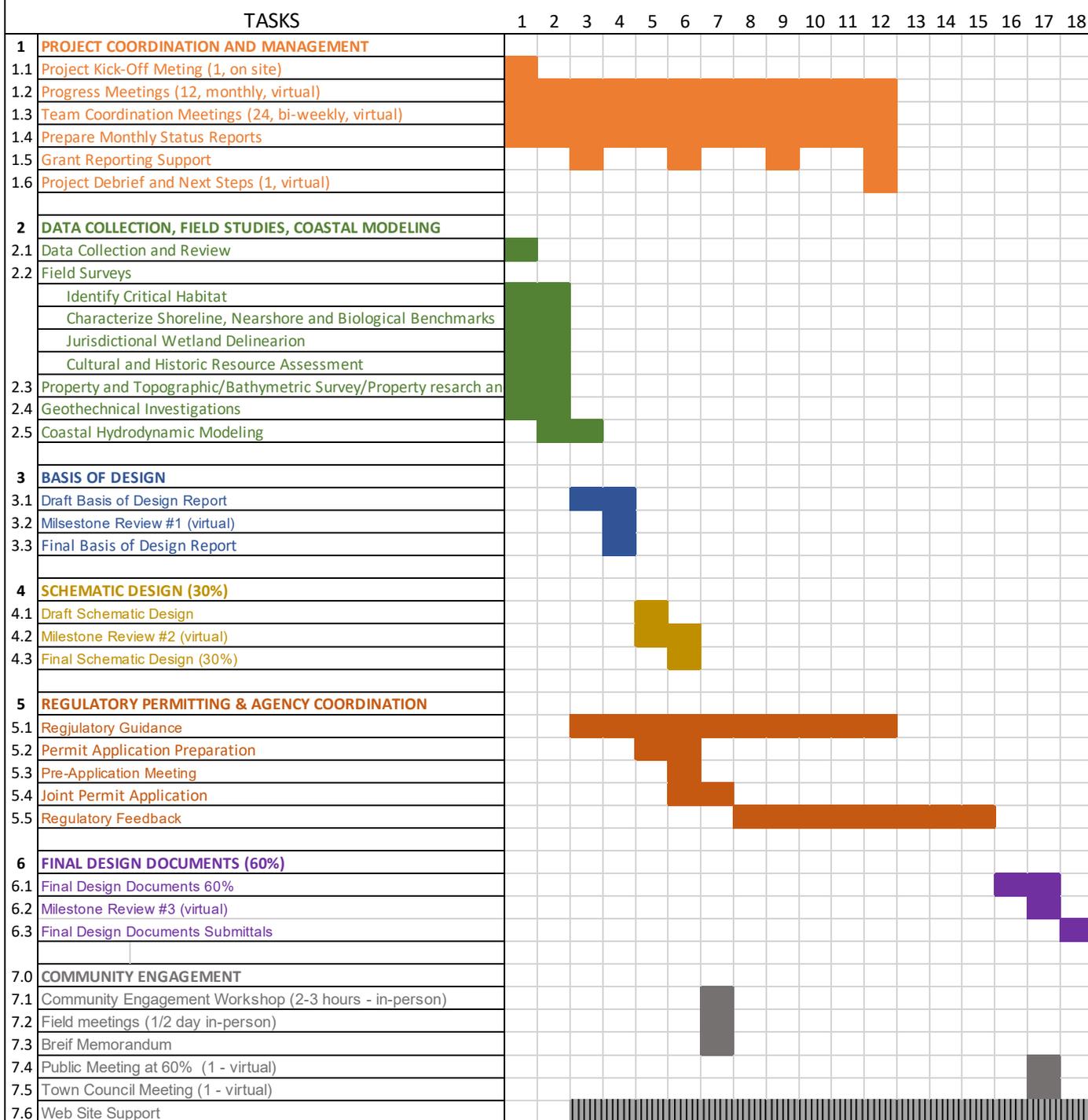
Project Schedule

The following schedule outlines the anticipated time frames for performing each Task. In accordance with the grant funding requirements and anticipated extension, BioNC anticipates completing the scope of work within 18 months from Notice-to-Proceed, provided there are no delays due to unforeseen conditions including weather delays in conducting field studies, Town of Nags Head delays in meeting schedules and review times for deliverables, or other factors outside of BioNC control. It is anticipated that securing the necessary state and federal permits may require more than 12 months. Work beyond the 18-month period, including permit application tracking, responding to requests for additional information and attending meetings requested by the regulatory agencies is considered supplemental services and not included in this schedule.

Nags Head Estuarine Shoreline Management Design

SCHEDULE

MONTHS FROM NTP



FEE

Compensation for the services described herein are in accordance with the Scope of Work and Schedule specified above. The LUMP SUM FIXED FEE, including expenses, to perform this work is as follows:

- | Project Coordination and Management \$74,704
- | Data Collection, Field Studies, Coastal Modeling \$173,457
- | Basis of Design \$40,590
- | Schematic Design (30%) \$84,330
- | Regulatory Permitting and Agency Coordination \$67,740
- | Design Documents (60%) \$52,959
- | Community Engagement \$38,738
- | Contingency & Allowances \$ 6,500

TOTAL FEE \$539,018

Client Responsibilities

Client shall be responsible for the following:

- | Notification to proceed.
- | Timely review and comments (or approval) of all deliverables or other information presented for Owner approval.
- | Payment of invoices in accordance with Terms and Conditions.
- | Notification to Firm of any problems, in accordance with Terms and Conditions.

General Conditions

- | This proposal is valid for 60 days from the above date.
- | Reimbursable expenses will be billed in accordance with the attached Rate Schedule.

Conclusion

We appreciate this opportunity to propose our services. We are eager to pursue this project further and thank you for your consideration.

Sincerely,

McAdams



Hunter Freeman, PE, LEED AP | Senior Advisor, Water Resources – Green Stormwater Infrastructure
freeman@mcadamsco.com | 919. 361. 5000

HF/kt

Acceptance

By: _____

Date: _____

Name: _____

Title: _____

Accounting Information

Billing Contact: _____

Billing Contact Email Address: _____

Billing Contact Phone Number: _____

Billing Address: _____



621 Hillsborough Street
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 919. 361. 5000

Hourly Rate Schedule / 2024

1. SPECIFICATIONS FOR CONTRACT BY HOURLY CHARGE, THE FOLLOWING RATES APPLY

Role	Rate
Chairman / President / Vice President	\$290 - 400 /hour
Principal	\$325 /hour
Director / Practice Lead	\$145 - 265 /hour
Technical Manager	\$135 - 240 /hour
Project Manager	\$150 - 230 /hour
Assistant Project Manager	\$120 - 175 /hour
Landscape Architect	\$140 - 230 /hour
Planner	\$110 - 190 /hour
Project Engineer	\$130 - 240 /hour
Graphics + Visualization	\$110 - 160 /hour
Designer / Analyst	\$100 - 200 /hour
Intern	\$55 - 100 /hour
Administrative Services	\$80 - 110 /hour
Construction Administration	\$100 - 155 /hour
Survey Technician	\$95 - 125 /hour
2 Man Survey Crew	\$155 - 175 /hour
3 Man Survey Crew	\$185 - 200 /hour
UAS LiDAR Crew	\$285 /hour
SUE Crew Member	\$55 - 115 /hour

Hourly services are recorded and rounded to the nearest 1/4 hour.

2. THE FOLLOWING CHARGES APPLY ON ALL CONTRACTS, FOR COPIES OF PLANS AND SPECIFICATIONS SENT OUT OF THE ENGINEER'S OFFICE (TO CLIENT, CITY REGULATORY AGENCIES, BIDDERS, CONTRACTOR, OTHER CONSULTANTS, ETC.):

Item	Fee	Item	Fee
Oversize + Color Rep.	\$3.60 /each	Oversize Mylar Sepia	\$24.00 /each
Paper Reproductions	\$2.40 /each	Mylar Sepia	\$18.00 /each
Specifications	\$0.12 /each	Paper Sepia	\$6.00 /each

3. THE FOLLOWING RATES ARE CHARGED IN ADDITION TO THE ABOVE FEES:

Item	Fee
Fees Paid for Permits and Applications	Cost Plus 10%
Outside Photocopying, Travel, Overnight Delivery, Postage for Mass Mailings	Cost Plus 10%
Subcontractor Invoices	Cost Plus 12.5%

4. FEES ARE SUBJECT TO ADJUSTMENT AT THE BEGINNING OF EACH CALENDAR YEAR.

5. PROJECTS ARE BILLED ON A MONTHLY BASIS AND INVOICES ARE DUE UPON RECEIPT. INVOICES WHICH HAVE BEEN NOT BEEN PAID WITHIN 30 DAYS ARE PAST DUE AND SUBJECT TO FINANCE CHARGES OF 1.5% PER MONTH.

Client's Initials _____ Date _____



621 Hillsborough Street
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Terms + Conditions

The proposal submitted by THE JOHN R. McADAMS COMPANY (“CONSULTANT”) is subject to the following terms and conditions (collectively referred to as the “Agreement”) and, by accepting the proposal or any part thereof, CLIENT agrees and accepts the terms and conditions outlined below:

1. **Payment:**

CLIENT will pay CONSULTANT for services and expenses in accordance with periodic invoices to CLIENT and a final invoice upon completion of the services. Each invoice is due and payable in full upon presentation to CLIENT. Invoices are past due if not paid in full after 30 days. Past due amounts are subject to interest at a rate of one and one-half percent per month (18% per annum) on the outstanding balance from the date of the invoice.

In an effort to ensure prompt resolution of questions and disputes regarding CONSULTANT’s services and invoices, CLIENT agrees to notify CONSULTANT, in writing / email, of any questions or concerns CLIENT may have regarding the cost, quality or appropriateness of services provided related to an invoice within fifteen (15) days of the invoice date. If CLIENT fails to provide such notice to CONSULTANT, CLIENT waives its right to dispute the accuracy and appropriateness of any portion of such invoice for which notice was not provided.

If CLIENT fails to make payment to CONSULTANT within 30 days after the invoice date, CONSULTANT may, after giving seven (7) days written notice to CLIENT, suspend services under this Agreement until all amounts due are paid in full. If an invoice remains unpaid after sixty (60) days from invoice date, CONSULTANT may terminate the Agreement and/or initiate legal proceedings to collect the fees owed, plus other reasonable expenses of collection including attorney’s fees.

2. **Notification of Breach or Default:**

CLIENT shall provide prompt written / email documentation to CONSULTANT if CLIENT becomes aware of any breach of contract, defect, fault, error, omission or inconsistency arising out of or related to CONSULTANT’s services. The failure of CLIENT to provide such written notice within fifteen (15) days from the time CLIENT became aware of such breach of contract, defect, fault, error, omission or inconsistency, shall constitute a waiver by CLIENT of any claims against CONSULTANT arising out of such breach of contract, defect, fault, error, omission or inconsistency.

3. **Ownership of Instruments of Service:**

All reports, plans, specifications, instruments of service, field data, notes and other documents, including all documents on electronic media, prepared by CONSULTANT shall remain the property of CONSULTANT. CONSULTANT shall retain all common law, statutory and other rights, including intellectual property rights. In the event of termination of this Agreement and upon full payment of fees owed to CONSULTANT, CONSULTANT shall make available to CLIENT copies of all completed plans, specifications, and electronic files.

4. **Change Orders:**

CONSULTANT will treat as a change order request any documented or oral order (including directions, instructions, interpretations or determinations) from CLIENT which request changes in the Agreement or CONSULTANT's scope of work. If CONSULTANT is willing to proceed with such change, CONSULTANT will give CLIENT written notice within fifteen (15) days of a change order request of any resulting increase in CONSULTANT's fees and/or time of performance (a "Change Order"). Unless CLIENT objects in writing within ten (10) days, the Change Order becomes a part of this Agreement.

5. **Site Operations:**

CLIENT will arrange for right-of-entry to the property for the purpose of performing studies, tests and evaluations pursuant to the agreed services. CLIENT represents that it possesses necessary permits and licenses required for all ongoing activities at the site. If CONSULTANT is advised or given data in writing that shows the presence of underground or overground obstructions, such as utilities, CONSULTANT will give special instructions to our field personnel. However, CONSULTANT is not responsible for any damage or losses due to undisclosed or unknown surface or subsurface conditions, owned by CLIENT or third parties. CONSULTANT will take reasonable precautions to minimize damage to the property caused by our operations. CONSULTANT's fee does not include any cost of restoration due to any damage which may result and CONSULTANT is not responsible for any such repairs unless CONSULTANT fails to take reasonable precautions. If CLIENT desires CONSULTANT to repair such damage, CONSULTANT will comply and add the cost to our fee. Field tests or boring locations described in CLIENT's reports or shown on sketches prepared by CONSULTANT are based on specific information furnished by others or estimates made in the field by CONSULTANT's personnel. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated in CONSULTANT's proposal or report.

6. **Project Site:**

Should CLIENT not be owner of the project site, then CLIENT agrees to notify the owner(s) of the possibility of unavoidable alteration and damage to the site and to obtain permission from the owner(s) for such alteration and damage. CLIENT further agrees to indemnify, defend and hold CONSULTANT harmless against any claims by the owner(s) or persons having possession of the site through the Owner which are related to such alteration or damage.

7. **Assignment and Third Parties:**

Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than CLIENT and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CLIENT and CONSULTANT and not for the benefit of any other party. Neither CLIENT nor CONSULTANT shall assign, sublet, or transfer any rights under or interests in this Agreement without the written consent of the other which shall not be unreasonably withheld. However, nothing contained herein shall prevent or restrict CONSULTANT from employing independent subconsultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.

8. **Survival:**

All of CLIENT's payment obligations and liabilities, including but not limited to, its indemnification obligations and limitations, and CONSULTANT's rights and remedies with respect thereto, as well as the terms of Sections 6, 11, 12, and 14, shall survive completion of and the expiration or termination of this Agreement.

9. Force Majeure:

Should completion of any portion of the services or any obligation under the Agreement be delayed for causes beyond the control of or without the fault or negligence of CONSULTANT, including force majeure, the reasonable time for performance of the service or the deadline under the Agreement shall be extended for a period at least equal to the delay. Force majeure includes but is not restricted to acts of God, acts or failures of governmental authorities, acts of CLIENT's contractors or agents, fire, floods, epidemics, riots, quarantine restrictions, strikes, civil insurrections, freight embargoes, and unusually severe weather.

10. Standard of Care:

CONSULTANT shall perform its services under the Agreement in a professional manner, using the degree of care and skill ordinarily exercised by and consistent with the standards of professionals providing the same services in the same or a similar locality as the project. **THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING OUT OF OR RELATING TO THE SERVICES PROVIDED BY CONSULTANT UNDER THIS AGREEMENT, AND CLIENT WAIVES ITS RIGHT TO ASSERT SUCH CLAIMS AGAINST CONSULTANT.**

11. Limitation of Liability:

CLIENT agrees that the total collective and aggregate liability of CONSULTANT and its employees, officers, and directors for any and all claims that may be asserted by CLIENT arising out of or related to this Agreement, except for claims for willful or intentional misconduct by CONSULTANT, is limited to \$50,000 or to the fee paid to CONSULTANT under this Agreement, whichever is greater.

12. Waiver of Consequential Damages:

Both CLIENT and CONSULTANT hereby waive any right to pursue claims for consequential damages against one another, including any claims for lost profits.

13. Safety:

Except with respect to CONSULTANT's own employees, CONSULTANT is not responsible for site safety or compliance with the Occupational Safety and Health Act of 1970 ("OSHA"). Job site safety remains the sole exclusive responsibility of CLIENT or CLIENT's contractors. Likewise, CONSULTANT shall have no right to direct or stop the work of CLIENT's contractors, agents or employees.

14. Arbitration:

Any claim or other dispute arising out of or related to this Agreement shall be subject to Arbitration. Such claims and disputes shall first be subject to non-binding mediation, and if mediation is unsuccessful, shall be subject to Arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Any demand for Arbitration shall be filed in writing with the other party and with the American Arbitration Association. Nothing in this provision shall prevent CONSULTANT from acting to secure any lien rights it may have under applicable law.

15. Independent Contractor:

In carrying out its obligations, CONSULTANT shall be acting at all times as an independent contractor and not an employee, agent, partner or joint venturer of CLIENT. CONSULTANT's work does not include any supervision or direction of the work of other contractors, their employees or agents, and CONSULTANT's presence shall in no way create any liability on behalf of CONSULTANT for failure of other contractors, their employees or agents to properly or correctly perform their work

16. Termination:

Either party may terminate the Agreement with cause upon ten (10) days advance written notice, if the other party has not cured or taken reasonable steps to cure the breach giving rise to termination within the ten (10) day notice period. Either party may terminate the Agreement without cause upon thirty (30) days advance written notice to the other party. If CLIENT terminates without cause or if CONSULTANT terminates for cause, CLIENT will pay CONSULTANT for all services performed, costs incurred, non-cancelable commitments, and fees earned to the date of termination and through demobilization, including any cancellation charges of vendors and subcontractors, as well as reasonable demobilization costs.

17. Severability:

If any provision of this Agreement, or application thereof to any person or circumstance, is found to be invalid then such provision shall be modified if possible, to fulfill the intent of the parties as reflected in the original provision. The remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by the law.

18. No Waiver:

No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.

19. Merger, Amendment:

This Agreement constitutes the entire Agreement between CONSULTANT and CLIENT, and all negotiations, written and oral understandings between the parties are merged herein. This Agreement can be supplemented and/or amended only by a written document executed by both CONSULTANT and CLIENT.

20. Choice of Law:

The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the law of the State of North Carolina, excluding only its conflicts of laws principles.