



Town of *Kiawah Island*

Mayor

John. D. Labriola

Council Members

F. Daniel Prickett

Maryanne Connelly

John Moffitt

Scott M. Parker, MD

Town Administrator

Stephanie Monroe Tillerson

TOWN COUNCIL MEETING

Kiawah Island Municipal Center

Council Chambers

March 1, 2022; 2:00 PM

AGENDA

- I. Call to Order:
- II. Pledge of Allegiance
- III. Roll Call:
- IV. Approval of Minutes:
 - A. Minutes of the Town Council Retreat of January 11, 2022 [Tab 1]
 - B. Minutes of the Town Council Retreat of January 13, 2022 [Tab 2]
 - C. Minutes of the Town Council Meeting of February 1, 2022 [Tab 3]
- V. Mayor's Update:
- VI. Citizens' Comments (Agenda Items Only):
- VII. Presentation:
 - A. Kimley Horn - Preliminary Findings of the Kiawah Island Parkway Intersection and Corridor Traffic Study
- VIII. Old Business:
 - A. To Consider Approval of the Land Lease Agreement with Kiawah Island Utility (SouthWest Water) for Wet Trash and Recycling Center at Kestrel Court [Tab 4]
- IX. New Business:
 - A. To Consider Approval of the Tidal Trails Franchise Agreement [Tab 5]
 - B. To Consider Approval of the Proposal from Biohabitats for the Marsh Management Plan [Tab 6]
 - C. To Consider Approval of the Agreement with Kimley-Horn for the Kiawah Island Parkway at Beachwalker Drive Intersection Design [Tab 7]
 - D. To Consider Approval of the Public Safety Committee Appointment [Tab 8]
- X. Town Administrator's Report:
- XI. Council Member:
 - a. Committee Updates
 - b. General Comments
- XII. Citizens' Comments:
- XIII. Adjournment:



TOWN COUNCIL Agenda Item

TAB 1

III. Approval of Minutes

A. Minutes of the Town Council Retreat of January 11, 2022

TOWN OF KIAWAH ISLAND
2022 Council Strategic Planning Retreat
Municipal Center Council Chambers
January 11, 2022; 11:00 am

MINUTES

Call to Order: *Mayor Labriola called the meeting to order at 11:00 am.*

Present at meeting: John D. Labriola, *Mayor*
Dan Prickett, *Mayor Pro Tem*
Maryanne Connelly, *Councilmember*
John Moffitt, *Councilmember*

Present Via Zoom: Dr. Scott Parker, *Councilmember*

Also Present: Stephanie Tillerson, *Town Administrator*
Joe Wilson, *Town Attorney*
John Taylor, *Town Planning Manager*
Petra Reynolds, *Town Clerk*

Opening Comments:

Mayor Labriola began the meeting by stating that the 2022 Town Council Retreat will focus on the five goals identified in the Town's Mission Statement and be used as a reference point in the discussion and planning for 2022.

- A.** To ensure the protection of the residential character of the community
- B.** To ensure the protection of the Islands Natural Environment
- C.** To support the economic viability of Resort and other community-based enterprises
- D.** To ensure transparency of all Town Council Actions and Decisions
- E.** To ensure the fiscal integrity of the Town's finances

Mayor Labriola stated that the first and most critical important goal was ensuring the protection of the community's residential character. The impact of annexation and zoning on any community is a key component of the goal and will be the focus of the meeting's discussion. Since annexation and zoning are complicated and complex issues, two additional meetings have been scheduled for February 8 and February 22, both starting at 10:00 am. The February 8 meeting will be a workshop to continue Council's annexation and zoning discussion. The February 22 meeting will be in a Town Hall format providing community members with the opportunity to share thoughts and perspectives on the discussions and the direction Council and Staff are taking.

Mayor Labriola encouraged the community to listen and submit observations at any time to Ms. Tillerson to be responded to as part of the public input process.

On December 9, 2021, Mayor Labriola stated that Council received a request from the Community Association to "review the issues and give consideration on proposed amendments" that Kiawah residents have prepared. He thanked the residents for preparing the proposed amendments and indicated the meeting agenda and format were arranged in response to the request.

Mayor Labriola stated that on January 4, the Town received a petition from Kiawah residents in support to "amend, modify, and clarify Section 12-79 and add conditions to Section 12-159 for Town Council to consider prior to the approval of a proposed planned development rezoning application." There are five

(5) proposed amendments in Section 12-79 and ten (10) in Section 12-159. Ms. Tillerson and Mr. Wilson will review and comment on each change during the meeting. If all language changes can be completed by February 22, the ordinance could have its first reading at the March Town Council meeting; if not, additional Town Hall meetings will be scheduled in March. The community and future Councils must be confident that the necessary time was taken to access and prepare any changes to the ordinance to respond to any future annexation application requests.

Annexation and Zoning Process Discussion

Ms. Tillerson stated that she and Mr. Wilson, along with the assistance of Mr. Taylor, reviewed Sections 12-79 and 12-159 of the current ordinance and the suggested changes from the community. She stated that some changes would be incorporated into the ordinance language as provided, while others will have to be reworked. The end goal of the process is to create more community engagement and allow the necessary work to be done by the Planning Staff, the Planning Commission, and Council.

Mr. Tillerson stated she is only aware of two annexation applications considered by the Town, Freshfields, and the Municipal Center property.

Mr. Wilson reviewed the state law on annexation requirements and methods of annexation. Beyond the basic framework of those requirements, it is left to the municipality to decide on the annexation process and the question of zoning by ordinance or policy. Most municipalities with an annexation ordinance address the zoning issue in the ordinance or allow the petitioner to submit a zoning request for a specific category.

Mr. Wilson stated that goal was to provide for the Town, Council, residents, and the applicant clarity on the requirements and steps to be taken throughout the process within the framework of the state law.

• Section 12 – 79. Designation of annexed territory

Councilmembers, along with Mr. Wilson and Ms. Tillerson, engaged in an in-depth discussion of each of the suggested language changes:

- a. Purpose and intent
- b. First Reading for Ordinance regarding and application for annexation
- c. Pre-Zoning/Conditional zoning not permitted
- d. Initial zoning for annexed areas
- e. Zoning pause moratorium

Mayor Labriola noted that in the research and preparation for the meeting, Mr. Wilson and Ms. Tillerson reviewed approaches taken by other municipalities and found an annexation policy manual from the City of Bluffton, which was referenced as a possible process guideline.

Mayor Labriola pointed out that Sections 12-79 and 12-159 are part of the Town's zoning ordinance and questioned whether they should be separated as a standalone document. Ms. Tillerson indicated that it was the intention to have a document that would address the annexation process and any zoning classification.

• Section 12 – 159. Plan Development

Mr. Wilson pointed out that a Planned Development classification had a substantially extensive review process with the procedures, reviews, consideration factors normally included in a separate ordinance. The only state requirement for a planned development is that they are "mixed-use."

Councilmembers, along with Mr. Wilson, Ms. Tillerson, and Mr. Taylor, engaged in an in-depth discussion of each of the suggested language changes:

- d. Planned development procedure
 - 1. Preapplication conference
 - 2. Planned development plan
 - i. Application
 - ii. Planned development stipulations
 - vii. Approval criteria

During the discussion, it was agreed that some of the language changes could be included as suggested while others required further modifications. The primary goal of addressing community concerns and supporting positive changes to clarify the steps in the annexation and zoning process would provide a guideline that would benefit current and future Councils, the community, and the applicants.

In conclusion, Mayor Labriola agreed for Ms. Tillerson to meet with the petition representatives to receive feedback on the Council's discussion and prepare a draft of the language changes for the February 8 meeting. He encouraged the community to submit comments, suggestions, or reactions to the Council's direction.

Mayor Labriola adjourned the meeting at 12:33 pm.

Submitted by,

Petra S. Reynolds, Town Clerk

Approved by,

John D. Labriola, Mayor

Date



TOWN COUNCIL Agenda Item

TAB 2

III. Approval of Minutes

A. Minutes of the Town Council Retreat of January 13, 2022

WORK IN PROGRESS

Materials for Tab 2 are not finalized and will be added to the March Town Council Agenda and Materials when reviewed.



TOWN COUNCIL Agenda Item

TAB 3

III. Approval of Minutes

A. Minutes of the Town Council Meeting of February 1, 2022

TOWN COUNCIL MEETING

Via Zoom

February 1, 2022; 2:00 PM

AGENDA

I. **Call to Order:** *Mayor Labriola called the meeting to order at 2:00 pm.*

II. **Pledge of Allegiance**

III. **Roll Call:**

Present at Meeting: John D. Labriola, Mayor
Maryanne Connelly, Councilmember
John Moffitt, Councilmember
Dr. Scott Parker, Councilmember

Absent: Dan Prickett, Mayor Pro Tem

Also Present: Stephanie Tillerson, Town Administrator
Joe Wilson, Town Attorney
Petra Reynolds, Town Clerk
Jack Pringle, Attorney, Adams and Reese, LLP
Michael Sosnowski, Barrier Island Ocean Rescue
Craig Harris, Public Safety Director
Stephanie Braswell, Communications Manager
Bruce Spicer, Building Official

IV. **Approval of Minutes:**

A. Minutes of the Town Council Meeting of January 11, 2022

Councilmember Parker made a motion to approve the minutes of the January 11, 2022, Town Council Meeting. Councilmember Moffitt seconded the motion, and it was unanimously approved.

B. Minutes of the Special Call Town Council Meeting of January 13, 2022

Councilmember Moffitt made a motion to approve the minutes of the January 13, 2022, Special Call Town Council Meeting. Councilmember Connelly seconded the motion, and it was unanimously approved.

V. **Mayor's Update:**

Mayor Labriola stated that in January, a very productive three-day Planning Retreat was held. He thanked the staff for the very informative presentations on work done in their departments and priorities for 2022.

Mayor Labriola stated that the first day of the Retreat dealt with the community's request that the Council considers making modifications to the annexation and zoning ordinance. Each of the 15 points highlighted was reviewed, and a follow-up meeting was held with community members to obtain feedback. The next meeting, on February 8, will be a workshop to review drafts of suggested changes incorporating thoughts and comments expressed and on using an ordinance or policy moving forward. It is the hope that following the workshop, there will be a more complete draft of the changes to be

released to the community for discussion at the February 22 meeting. The Town Hall format will allow the community to provide comments in person or email prior to the meeting.

Mayor Labriola noted that he had a meeting with Mr. Mark Permar on the Beachwalker development proposal. Mr. Permar shared the presentation and the comments and concerns expressed at the numerous community meetings he held with several groups. With many objecting to the development, the feedback focusing on the height of buildings, density, and traffic concerns will be taken back to the developer.

Focusing on the traffic concerns expressed, Mayor Labriola stated that the Town commissioned a traffic study of the entire Beachwalker Drive area last fall. The comprehensive study considered the developed and the undeveloped properties considering their entitlements and zoning requirements. The presentation on the status of the report is being scheduled.

VI. Citizens' Comments (Agenda Items Only):

Mr. Hennessy commented on the Kiawah Island Utility rate increase. He stated that rate increase is subject to a rigorous regulatory review; however, the utility is owned by a chain of private entities and expressed skepticism about their motivations. He questioned if the Town has the inherent technical skills to review and challenge the rate increase or rely on the state's utility commission. He pointed out that analyses of certain aspects can be complicated and must be done to assess the rate increase properly. Since this is a very important rate case, he hoped the Town obtained whatever technical assistance needed to feel competent to make a proper assessment.

VII. New Business:

A. Discussion of the Kiawah Island Utilities Rate Increase

Ms. Tillerson stated that the Town engaged the services of Mr. Pringle, an attorney very familiar with rate cases, to assist with the rate increase process and has filed the presented petition to intervene on behalf of the Town.

Mr. Pringle indicated that Mr. Hennessy's earlier comment is correct; KIU is owned by Southwest Water which operates in several states and owns other systems in South Carolina. Current rate cases are receiving more scrutiny from other state agencies than in the past. He provided a detailed explanation of the roles of the South Carolina Office of Regulatory Staff and the South Carolina Department of Consumer Affairs in assessing the rate case request, the role the Town can play in the process, and the opportunity for public comments in virtual hearings. He discussed some of the areas of the applications where input from the Town may provide context on what is asked for in the request. He recommended discussion on whether to consider presenting someone as a witness and filing a brief testimony of concerns on the issues, consider allowing residents to offer public testimony and if the Town would consider resolution with the applicant.

In a public comment, Mr. Todd Boney engaged in an in-depth discussion with Mr. Pringle on Southwest Water and other utilities in the organization being structured on operating margin target profitability ratio vs. rate of return target.

B. To Consider Approval of a Land Lease Agreement with Kiawah Island Utility (SouthWest Water) for Wet Trash and Recycling Center at Kestrel Court

Mr. Wilson stated that in working with KIU on the lease, some questions were raised on the insurance the Town is required to carry on the property by the landlord (KIU). There are minor details about

provisions and the policies that still have to be resolved, so he requested to carry the approval of the lease agreement over to the next council meeting.

Councilmember Connelly made a motion to table the approval of a land lease agreement with Kiawah Island Utility (SouthWest Water) for the Wet Trash and Recycling Center at Kestrel Court. Councilmember Parker seconded the motion, and it was unanimously approved.

C. To Consider Approval of the Beach Patrol Contract with Barrier Island Ocean Rescue

Mr. Harris stated the Town posted a Request for Proposals for Beach Patrol and Code Enforcement services. One bid proposal was received from Barrier Island Ocean Rescue (BIOR).

Staff worked with representatives from BIOR to discuss proposal amounts, working hours, and additional options. After lengthy discussions, Mr. Harris requested that the contracts with BIOR for Beach Patrol and Code Enforcement services remain separate. This would allow him time to do a more extensive view of code enforcement services. The existing code enforcement contract would be amended for the final one-year extension expiring in February 2023, and the new Beach Patrol contract would be Option 2 for \$584,000 annually.

Having participated in some discussions, Councilmember Connelly supported the proposal to leave the contract separate. She stated that Code Enforcement is an important service recognized by residents and supported giving Mr. Harris time to collect information on the issues and time frames to make intelligent recommendations on Code Enforcement services. The Beach Patrol contract had very few changes and was recommended to be approved.

Mr. Sosnowski explained the increase in the proposed Beach Patrol contract cost was attributed to a 42% increase in the wage rate for labor and a 45% increase in equipment expenses since the 2017 contract. In addition, there is an inflationary increase of 43%, which includes recruiting, retaining, and training employees, fuel, and equipment costs.

Councilmember Moffitt made a motion to approve the Beach Patrol Option2 contract with Barrier Island Ocean Rescue for \$584,00.00. Councilmember Parker seconded the motion.

Following further discussion, the motion was unanimously approved.

D. To Consider Approval of the Amendment of the STR Code Enforcement Contract with Island Beach Services (Barrier Island Ocean Rescue)

Councilmember Connelly made a motion to approve the STR Code Enforcement Contract Amendment with Island Beach Services (Barrier Island Ocean Rescue). Councilmember Parker seconded the motion, and it was unanimously approved.

E. To Consider Approval of the Planning Commissioner Appointment

Mr. Moffitt stated that the appointment of Ms. Joanne Hennessy was recommended by the Chairman of the Planning Commission and is well qualified to serve as a Commissioner until 2024.

Councilmember Connelly made a motion to approve the appointment of Ms. Joanne Hennessy to the 2022 Planning Commission. Councilmember Parker seconded the motion, and it was unanimously approved.

F. To Consider Approval of the Construction Board of Appeals Appointment

Mr. Spicher presented two new appointees to the Construction Board of Appeals to replace Mr. Fullerton, who resigned, and Mr. Kunitzer, who is now the Fire Chief of the St. John's Fire District. Ms. Noel Kade, a local architect with extensive experience in design on both a federal, state, and local level, has agreed to fill Mr. Fullerton's seat. Chief Chris Wilhoit, St. John's Fire District Fire Marshal, had agreed to fill that seat.

Councilmember Connelly made a motion to approve the appointment of Ms. Noel Kade and Chief Chris Wilhoit to the 2022 Construction Board of Appeals. Councilmember Parker seconded the motion, and it was unanimously approved.

G. To Consider Approval of the Amendment to the existing Arts and Cultural Events Council Charter

Ms. Braswell stated the staff suggested changes to the current Arts and Cultural Event Charter, following suit with other committees that have moved towards the staff chaired positions and the addition of a full-time events coordinator to deal with some of the logistics that volunteers currently manage.

Councilmember Connelly made a motion to approve the amendment to the existing Arts and Cultural Event Charter. Councilmember Parker seconded the motion.

Following further discussion, the motion was unanimously approved.

H. 2022 Committee Appointments

- Arts and Cultural Events Council

Councilmember Parker made a motion to reappoint the current members to the 2022 Arts and Cultural Events Council. Councilmember Moffitt seconded the motion and was unanimously passed.

- Audit Committee

Councilmember Connelly made a motion to appoint Ms. Pamela Pollitt and reappoint the current members to the 2022 Audit Committee. Councilmember Parker seconded the motion and was unanimously passed.

- SATAX Committee

Councilmember Parker made a motion to appoint Mr. Steven Ellis and Ms. Jodi Rush and reappoint the current members to the 2022 SATAX Committee. Councilmember Moffitt seconded the motion and was unanimously passed.

VIII. **Town Administrator's Report:**

Mr. Spicher provided an update on the senior living facility. He spoke with Mr. Sykes, the lead architect on the senior living facility project. They have sold off a number of the units they have been working towards before getting construction started. Currently, the goal is for them to submit complete structural drawings for foundation-only permits in April of this year. The complete design package will be submitted either in the latter part of the fourth quarter of 2022 or, worst-case scenario, January 2023. Therefore, the completion date for the project is pushed back to the second or third quarter of 2024.

The Cape project is underway. Work is continuing on foundation work and some tower work (elevator shafts and stairwells), with things going pretty smooth. A permit was issued for the fire mains for the buildings to get that work underway. The cape project is slated to be completed barring any construction delays in the fourth quarter of 2023. At present, there have not had any submittals for the Beach Club portion of that building which includes two cottages, and we don't have any information as to when that may be submitted.

Ms. Tillerson provided an update on the Town's Garage, Kestrel Court, and Landscape projects. The garage project is moving right along, with the completion date slated towards the mid to end of February. Work on the Kestrel Court continues. The new landscapers, Artigues, are onboard for the Landscape project. They have done work on removing dead materials.

Mayor Labriola asked when Kestrel Court was to be completed. Ms. Tillerson stated that the project was far behind and couldn't give a timeline right now. However, hopefully, it will begin before the peak season begins. Work can begin once the drawings are received, which should be in about three weeks, and KIU signs the lease agreement. The work should start in March and then hopefully be done by May, if not sooner.

IX. Council Member:

- a. Committee Updates
- b. General Comments

Ms. Connelly asked to make a comment; I have been thinking a lot about the Beachwalker properties and also any other properties that come in for our consideration as a council; there's always a common theme, if you read the letters from residents and also the meetings, we always hear about is a consistent issue of traffic and the impact of traffic. So as a Council, I would ask my fellow Councilmembers to consider that we should not move forward with anything until we have the Beachwalker plans identified and implemented. I feel that it is very hard to make decisions without knowing that.

Councilmember Parker agreed with Ms. Connelly stating; I have been having similar thoughts. I recognize that developers haven't submitted an amendment agreement yet, but I would like to see what the impact of the development of The Cape, The Beach Club, and build out on Parcel 13 looks like before we move forward with anything because I would like to have tangible visual proof of what that looks like.

Councilmember Moffitt stated; I would go along with those Councilmembers Connelly and Parker's thoughts.

Councilmember Moffitt stated that at the Mayor's request, an Ad Hoc Noise Workgroup was established. The first meeting will be via Zoom and is scheduled for Friday, February 4, at 1:00 pm. He reviewed the members of the workgroup; Brian Gerard, the director of golf, will represent the Resort, Carl Ritchie, KICA Security Director will represent KICA, Michael Sosnowski, nighttime Code Enforcement Officer, and four citizen members, Doug Benham, Harry Bell, Michael Heidingsfelder and Lynn Schroeder. He reviewed the information gathered and the charge for the workgroup at the Friday meeting.

X. Citizens' Comments:

None

XI. Adjournment:

Councilmember Parker made a motion the adjourn the meeting at 3:30 pm. Councilmember Connelly seconded the motion and was unanimously passed.

Submitted by,

Petra S. Reynolds, Town Clerk

Approved by,

John D. Labriola, Mayor

Date

DRAFT



TOWN COUNCIL Agenda Item

T A B 4

VIII. Old Business

- A. To Consider Approval of the Land Lease Agreement with Kiawah Island Utility (SouthWest Water) for Wet Trash and Recycling Center at Kestrel Court**

STATE OF SOUTH CAROLINA)
) LEASE AGREEMENT
COUNTY OF CHARLESTON) (Recycle and Dumpster Site on Kestrel Court)

THIS AGREEMENT (hereinafter the "Lease" and/or the "Agreement") is made and entered as of the [REDACTED] day of February, 2022, by and between KIAWAH ISLAND UTILITY, INC. (a South Carolina Corporation hereinafter sometimes referred to as the "Landlord") and the TOWN OF KIAWAH ISLAND (a municipal corporation organized and existing under the laws of the State of South Carolina hereinafter sometimes referred to as the "Tenant").

1. **Leased Premises.** In consideration of the sum of One and No/100 (\$1.00) Dollar, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, that certain piece, parcel, or tract of land owned by Landlord located on the south side of Kestrel Court, adjacent to the Kiawah Island Utility tract, in the Town of Kiawah Island, Charleston County, S.C., more particularly depicted on Exhibit "A" attached hereto and incorporated herein by reference (the "Leased Premises").

2. **Term.** The Term of this Agreement shall be for a period of three (3) years, commencing as of March 1, 2022, and terminating on February 28, 2025 (the entire period being the "Lease Term"). The Lease Term shall be extended automatically for additional three-year periods at the end of each Lease Term; provided, however, that either party may terminate this Lease upon 60 days prior written notice to the other party.

3. **Use.** The Leased Premises shall be used by Tenant only as a site for placement and maintenance of a garbage dumpster and recycling bins for collection and removal of garbage and recycling material absent Landlord's prior, written consent (which consent may be granted or withheld in Landlord's sole discretion).

Tenant's use and occupancy of the Leased Premises shall be in compliance with all applicable laws and regulations, and subject at all times to the terms, provisions, and limitations set forth in the Kiawah Island Covenants and Restrictions of record in the Charleston County R.M.C. Office.

Tenant's use and occupancy of the Leased Premises shall not interfere with the owners and tenants of adjacent properties.

4. **Rent.** As rental for the Leased Premises, Tenant shall pay Landlord the sum of One and No/100 (\$1.00) Dollar per year of the Term, payable to Landlord on each anniversary of the date of this Agreement.

5. **Improvements and Maintenance.** Landlord shall allow Tenant to pave, add lighting, remove trees, and landscape the Leased Premises; provided, however, that any and all improvements to the Leased Premises, including, without limitation, such paving and lighting, tree removal, and landscaping shall be (i) made at Tenant's sole expense; (ii) subject to the prior written approval of Landlord (which approval shall not be unreasonably withheld) and the Kiawah Architectural Review Board; and (iii) at Landlord's request, removed by Tenant (at Tenant's sole

expense) within thirty (30) days of the expiration or earlier termination of this Lease. Tenant further agrees to keep the Leased Premises in a neat, tidy and clean condition at all times.

6. **Assignment.** Tenant may not assign or transfer this Agreement, or sublet or otherwise encumber all or any part of the Leased Premises without the prior written consent of Landlord.

7. **Notices.** Any notice, demand or other instrument or written communication required or permitted to be given, served, made, or delivered hereunder shall be given, served, made, or delivered first by e-mail to the email addresses set forth below, **and** by personal delivery or by mailing the original thereof either by (a) overnight courier (e.g. Federal Express), or by (b) certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Landlord:

Kiawah Island Utility, Inc.
31 Sora Rail Road
Kiawah Island, SC 29455
Attn: Becky Dennis, Director of Operations
Tel: 843.768.0641
Email: BDennis@swwc.com

With copy to:

SouthWest Water Company
12535 Reed Road
Sugar Land, TX 77478
Attn: General Counsel
Tel: 626.543.2649
Email: Legal@swwc.com

If to Tenant:

Stephanie Tillerson, Town Administrator
Town of Kiawah Island
4475 Betsy Kerrison Parkway
Kiawah Island, SC 29455
Tel: 843.768.9166
Email: stillerson@kiawahisland.org

With copy to:

Joseph C. Wilson, Town Attorney
Town of Kiawah Island
P.O. Box 178
Folly Beach, SC 29439
Tel: 843.834.2390
Email: jwilson@kiawahisland.org

or to such other addresses as either party may request by written notice to the other party. Any such notice, demand or other instrument or written communication mailed as above provided shall be deemed to have been given, served, made or delivered at the time that it was placed in the mail with sufficient postage attached.

8. **Property Taxes.** Tenant shall reimburse Landlord for its pro-rata share of the annual real estate taxes for the parcel upon which the Leased Premises is located, and 100% of any additional taxes as may be attributable solely to any improvements placed on the Leased Premises by Tenant. Tenant's pro-rata share of the annual real estate taxes as aforesaid shall be calculated by Landlord on a "per-acre" basis, and Tenant shall reimburse Landlord for the amount of any such tax payment within thirty (30) days of receipt of sufficient documentation indicating the amount paid and the calculation of Tenant's pro-rata share. Upon written request by Tenant, Landlord shall furnish evidence of payment of all taxes.

9. **Insurance.** Tenant shall maintain coverage under General Liability, Pollution Liability, Commercial Automobile Liability, and Workers Compensation insurance policies at its

sole expense in minimum amounts of \$1 million each. The policies shall provide coverage for Tenant, employees and subcontractors and their employees, and their heirs, agents, and employees, while acting within the scope of their duties, against all claims arising out of or in connection with this Lease. Such policies are to remain in full force and effect until this Lease is terminated by Tenant or Landlord.

- a) Tenant shall furnish to Landlord certificates of liability insurance on standard ACORD form, evidencing required amounts of General Liability, Pollution Liability, Commercial Automobile Liability and Workers' Compensation insurance, in force.
- b) Landlord shall be named as Additional Insured on a General Liability and Pollution Liability policies covering the Leased Premises in the minimum amounts of \$1 million each.
- c) Any contractor engaged by Tenant to enter the Leased Premises shall be required to maintain equivalent levels of insurance as required herein.
- d) The insurance policies covering the Leased Premises shall include waiver of subrogation in favor of Landlord. All insurance policies shall be issued by companies licensed to do business in the State of South Carolina and will be rated "A-" or better by A.M. Best, or shall otherwise be acceptable to Landlord.
- e) Policies shall not be cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice shall have been given to Landlord by the insurance carrier(s) or Town. The insurance policies covering the Leased Premises shall apply on a primary and non-contributory basis to Landlord, regardless of any other coverage in place. Tenant shall provide a copy of the above insurance policies and amendments/endorsements to Landlord upon request.

10. **Right of Mortgagees and Others.** Tenant accepts this Lease subject and subordinate to the lien of any current or future mortgage created upon the Leased Premises and to all existing recorded restrictions, covenants, easements and agreements of record. Tenant agrees to execute, from time to time, when requested to do so by Landlord, subordination agreements in recordable form, provided no such future mortgage, conveyance, or encumbrance, nor any foreclosure thereof, nor any purchase thereunder, shall impair or abridge the rights of Tenant as provided herein. Landlord and/or its authorized agents and permittees shall have the right (but not the obligation) to enter upon the Leased Premises from time to time, so long as such entry does not unreasonably interfere with Tenant's use and enjoyment thereof.

11. **Nonwaiver.** Neither a failure by the Landlord to exercise any of its options hereunder, nor failure to enforce its rights or seek its remedies upon any default, nor the acceptance by the Landlord of any rent accruing before or after any default, shall effect or constitute a waiver.

12. **Quiet Enjoyment.** If the Tenant pays the rent it is obligated hereunder to pay, and observes all other terms, covenants and conditions hereof, it may peaceably and quietly have, hold and enjoy the Leased Premises during the term of this Lease, subject, however, to all the terms of this Lease.

13. **Tenant's Default.** If Tenant shall be in default in the performance or observance of any other term, covenant or condition to be performed or observed by Tenant under this Lease and if Tenant shall fail to cure said default within thirty (30) days after receipt of notice of said default from Landlord, then Landlord may cancel this Lease.

14. **Surrender of Premises.** Except in the case of condemnation, at the expiration or sooner termination of the term of this Lease, Tenant shall surrender the Leased Premises in the same condition as the Leased Premises were in upon delivery of possession thereto under this Lease, reasonable wear and tear excepted.

15. **Miscellaneous Provisions.**

(a) **Relationship of Parties.** It is the intention of the parties hereto to create the relationship of Landlord and Tenant, and no other relationship whatsoever, and unless expressly otherwise provided herein nothing herein shall be construed to make the parties hereto liable for any of the debts, liabilities or obligations of the other party.

(b) **Governing Laws.** This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of South Carolina.

(c) **Invalidity of Particular Provisions.** If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(d) **Successors and Assigns.** Except as may be expressly otherwise provided herein, the terms, covenants and conditions hereof shall inure to the benefit of and shall be binding upon Landlord and its successors and assigns and the terms, covenants and indentures hereof shall inure to the benefit of and shall be binding upon Tenant and its successors, heirs, legal representatives, and permitted assigns.

16. **Entire Agreement.** This Agreement shall constitute the entire agreement between the parties hereto and neither this Agreement nor any provision thereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Kiawah Island Utility, Inc., has caused these presents to be executed in its name by its Officer thereunto duly authorized and its seal to be hereunto fixed, this _____ day of _____, 2022.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

KIAWAH ISLAND UTILITY, INC.
(SEAL)

By: _____

Its: _____

IN WITNESS WHEREOF, Kiawah Island Utility, Inc., has caused these presents to be executed in its name by its Officer thereunto duly authorized and its seal to be hereunto fixed, this _____ day of _____, 2022.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

TOWN OF KIAWAH ISLAND
(SEAL)

By: _____
John Labriola, Mayor

Attest: _____
Clerk of Council



TOWN COUNCIL Agenda Item

TAB 5

IX. New Business

A. To Consider Approval of the Tidal Trails Franchise Agreement

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

**FRANCHISE AGREEMENT BETWEEN
THE TOWN OF KIAWAH ISLAND
AND WATERSPORTS UNLIMITED, LLC
dba TIDAL TRAILS**

AGREEMENT, entered into this 1st day of March 2022, by and between the **TOWN OF KIAWAH ISLAND** (hereinafter the “Town”) and **WATERSPORTS UNLIMITED, LLC dba TIDAL TRAILS** (hereinafter the “Franchisee”).

WHEREAS, the Franchisee, which maintains a business address at 1905 Edwins Crossing, Johns Island, South Carolina, 29455, desires to enter into a non-exclusive franchise agreement with the Town for the purpose of conducting, within the below defined beach area, certain commercial activities, specifically, the leasing only of those items listed in **Exhibit “A”** of this agreement.

NOW, THEREFORE, the parties hereby mutually agree as follows:

1. TERM:

This agreement shall be for a three-year term commencing on the 1st day of March 2022 and expiring on the 28th day of February 2025 with an option of two (2) one (1) year extensions. This Franchise Agreement may be terminated without cause by either party in whole or in part at any time with thirty (30) days written notice.

2. HOURS OF OPERATION:

The Franchisee may conduct commercial activities (as defined herein) within the beach area seven (7) days per week, between the hours of 7:00 AM and 8:00 PM.

3. AREAS OF OPERATION:

By this agreement, the Franchisee is hereby authorized to operate and conduct commercial activities within the Town of Kiawah Island, provided the Franchisee is operations do not extend into the dunes, in the following area:

A. In front of the Sandcastle Community Center (Property Owners Pool)

4. CONDUCT OF OPERATION:

A. The Franchisee and its employees shall at all times evidence a due concern for the preservation and enhancement of the health, safety and general welfare of citizens visiting the beach and also for the preservation and enhancement of the beach ecology

by strict adherence to the Municipal Code of the Town of Kiawah Island, as amended. In that regard, such employees shall assist beach visitors to be aware of and adhere to Town Beach Ordinances.

- B. Franchisee shall provide all employees with a distinctive uniform (shirts and pants) which identifies the employee with the Franchisee. Uniforms must be worn at all times while on duty and must be clean and neat in appearance.
- C. Franchisee and employees are prohibited from consuming alcoholic beverages while on duty during the designated hours of operation.
- D. Franchisee and employees shall instruct any potential customers regarding the safe use of any leased water sports equipment.
- E. Franchisee and its employees shall provide its services in the following manner subject to the specified conditions:
 - (1) Attendants shall be located at those boardwalk accesses deemed appropriate by the Franchisee within the Franchisee's area of operation as defined in Paragraph 4 of this Agreement.
 - (2) Surf kayaks shall be stored neatly under or immediately adjacent to the Sandcastle Community Center beach walkover when not in use. Surfboards shall also be stacked neatly when not in use and must be removed from the beach at the end of each day.
- F. Franchisee and its employees shall strive to avoid interfering with the enjoyment of guests, visitors, property owners, or other persons of the public beach areas within the Town of Kiawah Island. At the request of the Town, Franchisee shall alter or amend its operations whenever the Town determines a substantial interference arises between the private enjoyment of persons on the beach and Franchisee's services.

5. **FRANCHISE CONSIDERATION:**

During the term of this agreement, including any renewal term, a franchise fee of 3% of the previous year's gross receipts shall be paid by the Franchisee annually to the Town. Said payments shall be made with the renewal of the business license for each franchise year.

6. **INSURANCE:**

Franchisee shall carry and maintain Worker's Compensation insurance in statutory amounts, comprehensive general liability insurance endorsed to include product and completed operations and contractual liability in a minimum amount of \$1,000,000.00 combined single limit. Each policy shall provide that it may not be canceled or changed without at least ten (10) days prior notice to the Town. The Town of Kiawah Island shall be

included as a named insured on the comprehensive general liability policy, and the Franchisee shall deliver to the Town a copy of the policy and any endorsements thereto.

7. INDEMNIFICATION:

- A. Franchisee shall defend, indemnify and hold harmless the Town, its officers, directors, agents and employees from and against any and all actions, costs, claims, losses, expenses and/or damages, including attorney=s fees, whether incurred prior to the institution of litigation, during litigation or on appeal arising out of or resulting from the conduct of any commercial activity hereby authorized or the performance of any requirement imposed pursuant by this agreement, however caused or occasioned, unless caused by the willful misconduct or gross negligence of the Town.
- B. Franchisee shall further indemnify the Town, its officers, directors, agents and employees from and against any and all actions, costs, claims, losses, expenses and/or damage including attorney=s fees, whether incurred prior to the institution of litigation, during litigation or on appeal, for or arising out of any bodily injuries to or the death of any of Franchisee=s employees working at the specified location of operation during the specified hours of operation which may occur, however caused or occasioned, unless caused by the willful misconduct or gross negligence of the Town.

8. NO AGENCY CREATED:

The parties hereto intend that no master/servant, employer/employee, or principal/agent relationship will be created by this agreement. Nothing contained herein creates any relationship between Tidal Trails and the Town of Kiawah Island, South Carolina, other than that which is expressly stated herein. The Town of Kiawah Island, South Carolina, is interested only in the results to be achieved through this grant of franchise. The conduct and control of the agents and employees of Tidal Trails, and the methods utilized by Tidal Trails, in fulfilling its obligations hereunder shall lie solely and exclusively with the corporation and its agents, officers, and directors. Franchisee=s employees shall not be considered agents or employees of the Town of Kiawah Island, South Carolina for any purpose. No person employed by Tidal Trails shall have any benefit, status or right of employment with the Town of Kiawah Island, South Carolina.

9. ASSIGNMENT:

Franchisee may assign or transfer its franchise to another entity or person subject to a sixty (60) day notification to the Town Administrator and upon approval in writing from the Town Council.

10. EFFECTIVE DATE: This agreement shall be effective March 1, 2022.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date and year first above written.

WITNESSES:

TOWN OF KIAWAH ISLAND

By: John D. Labriola
Its: Mayor

TIDAL TRAILS

By: Duane Lapp
Its: Owner

EXHIBIT “A” TO FRANCHISE AGREEMENT

The following is a list of products leased on the beach and in the ocean by the Franchisee.

Floats/Body Boards

Surfboards

Sea Kayaks, Sit-on-top Kayaks

The Franchisee shall take all appropriate and necessary steps to ensure that customers using the above referenced equipment shall utilize the same in a safe manner and at a safe location.



TOWN COUNCIL Agenda Item

TAB 6

IX. New Business

- B. To Consider Approval of the Proposal
from the Biohabitats Team for the
Marsh Management Plan**



Request for Town Council Action

TO: Mayor and Council Members

FROM: John Taylor, Jr., Planning Manager

SUBJECT: Comprehensive Marsh Management Plan

DATE: February 28, 2022

BACKGROUND:

Kiawah's salt marsh furnishes wildlife habitat, natural beauty, and recreation opportunities but it also provides critical protection from erosion by reducing wave action. Any negative impact on the salt marsh from rising sea levels, erosion, or irresponsible development, may reduce its effectiveness at protecting Kiawah's highlands. The loss of critical salt marsh would have significant impacts on the island. The Town desires to preserve its marsh and protect the life and property of its residents and property owners by establishing a framework like the Town's Comprehensive Beach Management Plan to guide planning for the protection, restoration, and management of the marsh and marsh islands for Kiawah. In 2019, the Town amended the Comprehensive Plan to include the formalization of a Marsh Management Plan. The development of a Marsh Management Plan will provide better understanding of the uses, benefits, potential impacts, and management options along the marsh front. The Marsh Management Plan will be used as a guide to encourage and establish local development practices, Town ordinances, policies, and capital improvement projects that enhance the quality of life on Kiawah and sustain a critical resource for generations. The Town placed a Request for Qualifications out for the project in January. Whereas six firms showed initial interest, two firms partnered together to develop a comprehensive scope of services responsive to the project goals.

ANALYSIS:

Biohabitats in collaboration with Elko Coastal Consulting has 35+ years of experience in shoreline management projects and plans including community engagement. They exude necessary collaborative experience working with key stakeholders, and by establishing this partnership, the Town can begin the work to deliver a product that addresses risk factors of our largest natural resource. The Town has already committed to several environmental studies for the Island that would contribute to the effectiveness of this plan. This plan will serve great measure in tackling the extensive list of resiliency planning initiatives and recommendations that has derived from the 2018 Flood Mitigation and Sea Level Rise Adaptation Report. Included in the scope of services is the option to memorialize marsh conditions and trends by developing a Story Map, an ongoing interactive tool allowing the public to engage with this process. This is a significant benefit in keeping the community engaged in this process as well as helping to educate our community of the marsh conditions and how the Town is taking a significant role via an adaptive management approach to protect this asset. In continuing the level of community engagement that our community has experienced

with the resiliency planning staff encourages Council to consider the robust planning charette and workshop option. The plan would begin in March 2022 with the final plan to be delivered in September 2022.

ACTION REQUESTED:

Town staff requests Town Council approve the Ways and Means Committee recommendation to enter in contract with the Biohabitats Team to prepare a Comprehensive Marsh Management Plan based on the outlined workplan.

BUDGET & FINANCIAL DATA:

The cost for this proposal is \$50,399 and will be secured from the General Fund. With the suggested multi-day planning charette workshop for community engagement, the cost for the proposal is \$61,331.

\$30,000 was budgeted as a placeholder for the Marsh Management Plan within the Environmental Department's budget. The balance of the total project cost would come from contingency.

Scope of Services

1. Biohabitats, in collaboration with Elko Coastal Consulting (Biohabitats Team), will prepare a Comprehensive Marsh Management Plan for the Town of Kiawah Island, in accordance with the Work Plan, Schedule and Fee provided below.
2. The Biohabitats Team will work under the supervision of the Town of Kiawah Island (TOKI) Planning Staff in the development of the Comprehensive Marsh Management Plan (CMMP).
3. The Town of Kiawah Island will provide the following services in support of the Work Plan
 - a. Electronic and paper copies of all relevant reports, maps, plans, etc. from the Kiawah Island stakeholder organizations.
 - b. Promotion, venue, security, food (optional) for the Drop-In and Workshop
4. Scope of services does not include the following:
 - a. Topographic & bathymetric surveys
 - b. Geotechnical and subsurface investigations
 - c. Utility base information or surveys
 - d. Hydrologic and hydraulic modeling
 - e. FEMA Floodplain mapping and permitting
 - f. Identification and remediation of hazardous, toxic or radioactive waste
 - g. Environmental sampling
 - h. Historic and cultural resources assessments
 - i. Physical models
 - j. Professional renderings
 - k. Grant writing and tracking
 - l. Permitting
5. This proposal is valid for a period of 60 days, after which it may be renegotiated.

WORK PLAN

Task 1 - Project Management

- 1.1 Kick-off Meeting with TOKI staff to review scope of work, schedule, invoicing, communication protocols, final deliverables and community engagement strategy including identifying key community stakeholders (residents, community association and town officials, NGOs and regulatory agency personnel)
- 1.2 Immediately following the kick-off meeting, Biohabitats will lead a ½-day marsh tour (via kayaks/canoes and walking) with TOKI staff and invited key community stakeholders. Objectives of the tour include establishing a collective understanding of the marsh/land interface, critical habitat characteristics, recreational & homeowner access needs, town infrastructure & development plans and impending impacts from sea level rise.
- 1.3 Biohabitats will establish a project web-based SharePoint site to facilitate document sharing between Biohabitats and TOKI staff, including postings of, background information, research, relevant current events, project schedule, project deliverables and community engagement feedback. The site would be password protected with controlled user access.

Task 1 Deliverables:

- Project kick-off meeting minutes (PDF)
- SharePoint site

- 1.4 *OPTION 1 - Kiawah Island Marsh Management StoryMap* - In collaboration with TOKI Planning staff, Biohabitats will create an inspiring, immersive GIS based StoryMap by combining text, interactive maps, photographs and other multimedia content. Updated after each Task, the StoryMap will serve as public portal into the planning process, including an interactive component allowing users to submit observations and feedback. It will also serve as an on-going tool to document marsh conditions and trends.

Task 2 - Inventory, Analysis & Synthesis

- 2.1 The Biohabitats Team will collect and review previous studies, historical accounts, plans, data, reports, surveys & maps; Town development standards, polices, future development initiatives and past community surveys; and local, state & federal regulations.

The Biohabitats Team will review and extract relevant information from the following documents:

- Town of Kiawah Island Comprehensive Plan
- 2018 Flood Mitigation and Sea Level Rise Adaptation Report
- Town of Kiawah Island Land Use Planning and Zoning Ordinance
- 2013 Amended and Restated Development Agreement Executed By and Between Kiawah Resort Associates L.P. and the Town of Kiawah Island
- 2010 Executed Development Between Kiawah Island Golf Resort and the Town of Kiawah Island
- 2020 Town of Kiawah Island Beach Management Plan

- 2020 KICA and TOKI Adaptive Management Plan for Kiawah Island, Phase I – Threshold Identification
- Marsh Vulnerability Study
- Kiawah Ground Water Study

2.2 The Biohabitats Team will participate in up to five (5) separate meetings with stakeholder groups to solicit feedback on ideas and expectations regarding future marsh management needs, challenges, and opportunities. These interviews will help the Biohabitats Team determine redundant themes and top priorities for managing the marsh.

2.3 Following the tactics of the VCAPS process, along with the information collected in previous tasks, the Biohabitats Team will:

- Outline the watershed boundaries of the surrounding marshes and their cone of influence
- Identify the overall health and vulnerability of Kiawah marshes
- Identify marsh projected evolution and its impact on wildlife habitat
- Document past & current development patterns, building standards, policies, jurisdictional authorities, and regulation and building practices in relation to their impact to the health and evolution of Kiawah's marshes impacted Kiawah marshes
- Describe current marsh responses to existing hazards and conditions
- Prepare current and future projections of marsh conditions, including known thresholds and projected responses that may emerge under new conditions.
- Identify conflicts and opportunities associated with existing and future development
- Identify non-public and community engagement outreach initiatives
- Perform gap analysis and provide recommendations for how to perform the analysis

Working collaboratively with TOKI staff, The Biohabitats Team will prepare a series of graphics (plans, diagrams, sketches, notes) illustrating the analyses and syntheses of information. These graphics will be used to both document our findings, serve as a foundation for a planning workshop, and to inform the CMMP.

Task 2 Deliverables:

- Draft package of graphics (PDF) (comments will be addressed as part of Task 4.1)
- Brief written summary of information including survey results and sources of information (PDF)

Task 3 - Planning Drop-In & Workshop

3.1 Working collaboratively with TOKI Planning staff, the Biohabitats team will host a half-day community drop-in on Kiawah Island. Invited stakeholders and KI residents will be invited to explore and provide feedback on preliminary marsh management ideas.

3.2 Working collaboratively with TOKI Planning staff, the Biohabitats team will lead a half-day workshop with TOKI, Clemson Cooperative Extension Service, SC Sea Grant Consortium, SC DNR, North Inlet – Winyah Bay National Estuarine Research Reserve, and SC DHEC OCRM to explore and develop effective educational strategies for protecting the Kiawah Island marshes.

3.3 OPTION 2 – In place of Task 3.1, the Biohabitats team, working collaboratively with TOKI Planning staff, will curate a 2-day community driven Planning Charrete on Kiawah Island to explore and develop collective recommendations for the management of Kiawah Island’s marshes. The planning charrette will facilitate robust community stakeholder engagement as well as provide quick field access to the marsh and upland interface to test planning recommendations.

Objectives of the planning charrette include:

- Establish shared set of principles and goals for managing the marsh
- Test out assumptions, challenges and opportunities
- Solicit Community input and feedback on marsh management recommendations
- Develop strategic education messaging

We envision the planning charrette being a 2-day event that would include the following:

- 1st Morning kick-off session with invited key stakeholders
 - TOKI Planning staff and Biohabitats team focused work sessions
 - Afternoon work sessions with key stakeholders
 - Intermittent field trips as needed
 - Afternoon report out to TOKI Planning staff
- 2nd Day late afternoon public presentation on process and draft recommendations

Deliverables for Option 2 will include a brief summary on the outcomes from the charrette (PDF) including drawings and graphics generated during the Charrette (incorporated into Task 4.1)

Deliverables:

- Brief written summary on the outcomes from the drop-in & workshops

Task 4 - Comprehensive Marsh Management Plan

4.1 Leveraging the preliminary recommendations developed during the planning charrette and workshop, the Biohabitats Team will prepare DRAFT CMMP that addresses the following:

- Strategies the Town of Kiawah Island should employ to sustain healthy marshes, including recommendations on how and where marsh management, protection and restoration strategies should be employed across Kiawah Island
- Recommendations on how permitting and approval processes can be improved or streamlined to ensure key balance between development and a healthy marsh environment.
- Recommendations and prioritization on marsh management best practices suitable for Kiawah Island and its unique circumstances.
- Strategies for educational outreach for residents, property owners, commercial establishments and other stakeholders.

The CMMP will be a graphically rich, easy to digest report. It will include a summary of the planning process, the state of the current marsh, projections of future conditions along with recommendations and strategies for responsible development that protects, restores, and regenerates Kiawah Island’s marsh for generations to come. It will include a user-friendly summary pull-out (11X17) of the recommendations that can be shared with community residents, town staff,

policy makers, regulatory agencies, the real estate & development community and recreational enthusiasts.

- 4.2 The DRAFT MMP will be submitted to TOKI staff for distribution, review, and comment. The Biohabitats Team will meet with TOKI Planning staff to review and discuss edits/revisions to the document. The TOKI Planning staff will compile and return to Biohabitats one fully-marked up copy.
- 4.3 The Biohabitats Team will make a presentation to the TOKI Town Council on the CMMP final recommendations.
- 4.4 Addressing the comments from the TOKI staff and public input review, the Biohabitats Team will prepare the FINAL CMMP. A Draft FINAL will be provided to TOKI Planning staff for one last look-see prior to final production and submittal.

Task 4 Deliverables:

- Draft and final CMMP report (20-30 pages; WORD and PDF copy) with pull-out summary
- PowerPoint (up to 40 slides) summarizing the CMMP process and recommendations

SCHEDULE

The Project Schedule outlines an achievable timeframe for carrying out the proposed work as outlined in the Work Plan.

<u>Task</u>	<u>Days from NTP</u>
Task 1 - Project Management	On-Going
Task 2 - Inventory, Analysis & Synthesis	60
Task 3 - Planning Drop-In & Workshop	98
Task 4 - Comprehensive Marsh Management Plan	182
<i>OPTION 1 - Kiawah Island Marsh Management StoryMap</i>	<i>30 days(on-going)</i>
<i>OPTION 2 - Planning Charrette</i>	<i>Completed as part of Task 3</i>

Delays in the schedule due to encumbered site access, and extended Town review and approvals, may result in extending work efforts past due dates and additional fees.

FEE

Compensation to Biohabitats for the services described herein are in accordance with the Scope of Services, Work Plan and Schedule specified above. The LUMP SUM fee including expenses to perform this work are as follows.

<u>Task</u>	<u>Lump Sum Fee</u>
Task 1 - Project Management	\$ 4,367
Task 2 - Inventory, Analysis & Synthesis	\$ 13,765
Task 3 - Planning Drop-In & Workshop	\$ 6,205
Task 4 - Comprehensive Marsh Management Plan	<u>\$ 17,137</u>
TOTAL FEE	\$ 41,474

<i>OPTION 1 - Kiawah Island Marsh Management StoryMap</i>	<i>\$ 8,925</i>
<i>OPTION 2 – Planning Charrette (additional cost for Task 3 after subtracting the ½ day Community Drop-In)</i>	<i>\$ 10,932</i>

ADDITIONAL SERVICES

Additional Services will be assessed on a case basis using the following hourly rates:

Labor Classification	Hourly rate
Principal	\$250.00
Project Manager	\$180.00
Senior Professional Staff	\$175.00
Staff Technician	\$145.00
GIS Technician	\$145.00
Administrative Staff	\$75.00

EXPENSES

Expenses for normal miscellaneous phone, shipping, and reproductions are included in this fee. Travel expenses including business airfare, business hotel, food, local transport, etc., from trips from the U.S. are included in this fee.

ADDITIONAL SERVICES

Services not explicitly included in this Proposal shall be considered additional services. A written agreement between Client and Biohabitats shall define the extent of the additional services and Biohabitats' compensation for such additional services before they are performed by Biohabitats.



TOWN COUNCIL Agenda Item

TAB 7

IX. New Business

- C. To Consider Approval of the Agreement with Kimley Horn for the Kiawah Island Parkway at Beachwalker Drive Intersection Design**



Request for Town Council Action

TO: Mayor and Council Members

FROM: John Taylor, Jr., Planning Director

SUBJECT: Kiawah Island Parkway at Beachwalker Drive Intersection Design

DATE: March 1, 2022

BACKGROUND:

The Town contracted with Kimley-Horn to conduct a study on Beachwalker Drive to improve safety for pedestrians, bicyclists, and motorists traveling this road. The study recommended improvements to the existing bike path and intersections along Beachwalker Drive. Town Council approved the bike path safety improvements along Beachwalker Drive in December 2021 and that project is scheduled to start by the second week of March. As part of the study recommendations were made for the intersection of Kiawah Island Parkway and Beachwalker Drive. Kimley-Horn put together conceptual designs for improvements to this intersection. Staff received community feedback via the workshops in the Fall of 2021 and has engaged with the Community Association to understand their needs pertaining to operations at the Main Gate. The Town wishes to have design and construction ready drawings developed to create a bid package for construction.

ANALYSIS:

Using the preferred conceptual improvements from the Beachwalker Drive Pedestrian and Bicycle Safety Action Plan for the intersection, Kimley-Horn will deliver design and construction plans with provide minimal construction administration for the onset of the project. Kimley-Horn has also been contracted with KICA to study the intersection of Kiawah Island Parkway and Kiawah Island Beach Drive. This is being treated as separate project being prepared for FY23.

ACTION REQUESTED:

Town staff requests Town Council approve the Ways and Means Committee recommendation of these services for the proposed amount of \$86,000.

BUDGET & FINANCIAL DATA:

This project will be funded through 80% Restricted Funds and 20% General Funds as a tourism related project.

February 21, 2022

Ms. Petra Reynolds
Town of Kiawah Island
4475 Betsy Kerrison Parkway
Kiawah Island, South Carolina

Re: ***Kiawah Island Parkway at Beachwalker Drive Intersection Design***

Dear Ms. Reynolds,

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letter agreement ("the Agreement") to the Town of Kiawah ("the Client") for providing roadway engineering services related to the Kiawah Island Parkway at Beachwalker Drive intersection.

PROJECT UNDERSTANDING

It is our understanding that the Client desires to perform roadway design services and construction administration services for the channelized left-turn lane concept dated June 24, 2021 drawn by Kimley-Horn. The channelized left-turn lane concept is the result of the *Beachwalker Drive Pedestrian and Bicycle Safety Action Plan* project completed in the Fall of 2021.

SCOPE OF SERVICES

The Consultant will provide the services specifically set forth below.

Task 1 –Kickoff Meeting/Design Workshop

Kimley-Horn will schedule a kickoff meeting/design workshop with representatives from the Town of Kiawah Island, the Kiawah Island Community Association, and the Kimley-Horn team to allow for a discussion of the project history, project approach, design standards and criteria, schedule, and deliverables. Key objectives of the kickoff meeting will include:

- Communicating the project scope, approach, and schedule
- Establishing a preferred project delivery timeline

Task 2 – Design and Construction Plans

It is assumed that Beachwalker Drive is a Local Road owned by The Town of Kiawah Island. It is also assumed Kiawah Island Parkway is a Local Road owned by the Town of Kiawah Island from Betsy Kerrison Parkway to approximately 45' east of Beachwalker Drive, where the ownership of Kiawah Island Parkway transfers to the Kiawah Island Community Association. Since these roads are not owned by the South Carolina Department of Transportation (SCDOT), no coordination or permitting is required through SCDOT. It is further assumed that the only coordination required with Charleston

County will be regarding the Land Disturbance Permit, and that all other reviews will be handled by the Town of Kiawah Island and the Kiawah Island Community Association.

Survey has been provided by The Town of Kiawah Island and the Kiawah Island Community Association; it is assumed the provided survey is sufficient for the design plans. If additional survey is deemed necessary, Kimley-Horn will coordinate with the Client to determine what information would be needed for the additional survey. If additional survey is needed, the Town of Kiawah would need to enter a separate contract with a surveyor. Survey costs are not included in this scope of services.

Upon receiving the survey provided by the Client and design criteria for the project, Kimley-Horn will develop preliminary roadway permit plans for the Kiawah Island Parkway at Beachwalker Drive intersection. Preliminary roadway permit plans will consist of: cover, general notes, typical sections, plan and profile sheets, signing and pavement marking plans, traffic control plans, erosion control plans, utility by others plans, and cross sections.

It is assumed that the Client will provide necessary pavement structure designs. No geotechnical services/pavement design is included in this scope of services.

Kimley-Horn will request that all utility agencies/companies whose facilities are located within the project limits provide plans that define the location and description of their existing facilities and easements within the project limits. Kimley-Horn will schedule and attend up to one meeting with utility agencies/companies whose facilities are located within the project limits and take the proposed utility relocations provided by the utilities and incorporate the information in the "Utilities by others" plans. Kimley-Horn will prepare one (1) round of meeting notes from the utility meeting. Kimley-Horn will coordinate for the Client to obtain soft-dig information at locations that underground utility conflicts seem likely to occur based on the proposed design. Kimley-Horn will incorporate the soft-dig information performed by the Client's soft-dig contractor to determine what adjustments may need to occur to resolve the utility conflict. Once the proposed utility relocations provided by the utility providers are incorporated into the permit plans, Kimley-Horn will schedule and attend up to one meeting to review the utility relocation plans with the utility providers and revise the utility relocation plan up to one time based on these meetings. Since some utility providers will not meet until final plans are generated, we cannot guarantee all utility conflicts will be addressed during the design process. Kimley-Horn will incorporate the information provided during these meetings by the utility companies in the "Utilities by others" plans.

After an internal review of the preliminary plans, Kimley-Horn will submit an electronic PDF of the preliminary roadway permit plans to the Client and the Kiawah Island Community Association for review.

Based on the requirements and comments received on the preliminary permit plans, Kimley-Horn will develop final roadway design plans. Final plans will consist of all the elements included in the permit plans with Client revisions incorporated. Kimley-Horn will prepare reproducible final plans in general accordance with SCDOT general procedures and policies relating to local highway design.

Once the permit plans are revised to incorporate the Client comments, Kimley-Horn will submit the plans to Charleston County for the Land Disturbance Permit. It is assumed that the total disturbed acreage for the project will be less than 1 acre but greater than 0.5 acres. Due to the proximity of the project to the ocean (less than 0.5 miles) and the assumed limits of disturbance, coordination with DHEC's Office of Ocean and Coastal Resource Management could be required.

It is assumed there will not be any further requirements from either Charleston County or SCDHEC for stormwater quality control beyond traditional stormwater conveyance measures, and as such, Kimley-Horn will not design a separate BMP for water treatment as a part of the roadway plans. Additional services will be required if further post construction stormwater devices are required.

Kimley-Horn assumes that agency comments will include one (1) additional round of Charleston County and SCDHEC comments before submitting final roadway design drawings. If they approve the final plans, Kimley-Horn will submit one (1) PDF set of final sealed plans to the Client for construction.

Task 3 – Special Provisions and Engineer's Opinion of Probable Construction Cost

Based upon the final plans, quantity computations will be performed by Kimley-Horn for each item of work designated as unit price pay items. Computations will be tabulated for inclusion in the Bid Document.

Where possible, the "Standard Specifications for Highway Construction and Standard Special Provisions," issued by the SCDOT, will apply for materials and construction of all work. However, when no applicable specification exists, Kimley-Horn will prepare Special Provisions for those items of work not covered in the Standard Specifications or existing Standard Special Provisions.

Utilizing recent bid data from similar projects in the area, Kimley-Horn will prepare an Opinion of Probable Construction Cost (OPCC) for this project. The OPCC will be based on the final summary of quantities and will be utilized in the final bid analysis and award, as well as the Client's acquisition of Performance Bonds for the construction of the project.

It is assumed that Kimley-Horn will prepare one (1) OPCC for the project, and that no meetings will be required to discuss the OPCC.

Task 4 – Bid Phase Services

Kimley-Horn will prepare the bid package to be in general concurrence with previous bid packages prepared by the Client. Kimley-Horn will provide the bid package to the Client for contractors to acquire the bid package from. The Client will be responsible for advertising the project for construction.

Kimley-Horn will conduct up to one (1) Pre-Bid Meeting with the Client. The Client is to provide the location for the Pre-Bid Meeting. Kimley-Horn will prepare one (1) round of meeting notes from the Pre-Bid Meeting.

Kimley-Horn will conduct up to one (1) Bid Opening Meeting. The Client is to provide the location for this meeting. Kimley-Horn will tabulate the bids received and evaluate compliance of bids with the bidding documents. Kimley-Horn will prepare a written summary of this tabulation and evaluation for the Client.

Task 5 – Limited Construction Phase Services

Kimley-Horn will provide limited professional construction phase services for the project as requested by the Client up to the budget provided. This phase begins at the start of construction or the completion of bidding, whichever occurs first.

This task consists of the following:

- Conduct a Pre-Construction Conference prior to commencement of construction activity.
- Respond to Contractor requests for information (RFI) made in accordance with the Contract Documents and issue necessary clarifications and interpretations. Any orders authorizing variations from the Contract Documents will be made only by Client.
- Make visits as directed by Client in order to observe the progress of the work. Such observations will not be exhaustive or extend to every aspect of Contractor's work. Observations will be limited to spot checking, selective measurement, and similar methods of general observation. Based on information obtained during site visits, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Kimley-Horn will keep Client informed of the general progress of the work.

Kimley-Horn will not supervise, direct, or have control over Contractor's work, nor shall Kimley-Horn have authority to stop the Work or have responsibility for the means, methods, techniques, equipment choice and usage, schedules, or procedures of construction selected by Contractor, for safety programs incident to Contractor's work, or for any failure of Contractor to comply with any laws. Kimley-Horn does not guarantee the performance of any Contractor and has no responsibility for Contractor's failure to perform its work in accordance with the Contract Documents. This task will be performed on an hourly basis.

Additional Services

Any services not specifically provided for in the above scope, as well as any changes in the scope the Client requests, will be considered additional services and will be performed at our then current hourly rates as we agree prior to their performance. Additional services may include services such as:

- Surveying
- Landscaping and Hardscaping Design and Plans
- Lighting and Electrical Plans
- Post-Construction BMP Design
- Structural Design Services
- Wetland Delineation and Permitting

- Public Meetings and Involvement
- Subsurface Utility Exploration (SUE)
- Construction Engineering & Inspection (CEI) (3rd party assumed contracted directly to Client)

Information Provided by Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client will provide topographic and SUE survey as well as geotechnical investigations for use on this project.

Schedule

We will provide our services expeditiously as practicable to meet a mutually agreed-upon schedule.

Fee and Billing

Kimley-Horn will perform the services in Tasks 1 - 4 for the total lump sum labor fee below. Individual task amounts are informational only. In addition to the lump sum labor fee, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. All permitting, application, and similar project fees will be paid directly by the Client.

Task 1	Kickoff Meeting/Design Workshop	\$ 2,000.00
Task 2	Design and Construction Plans	\$ 65,000.00
Task 3	Special Provisions and Engineer's OPCC	\$ 4,500.00
Task 4	Bid Phase Services	\$ 14,500.00

Total Lump Sum Labor Fee	\$ 86,000.00
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Task 5 Limited Construction Phase Services	Hourly as needed
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Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Reimbursable expenses will be invoiced based upon expenses incurred. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Kimley-Horn will perform the Services in Task 5 on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to our then-current rates.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the terms and conditions in the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, the term “the Consultant” shall refer to Kimley-Horn and Associates, Inc., and the term “the Client” shall refer to the **Town of Kiawah Island**.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please provide the following information:

Please email all invoices to _____

Please copy _____

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute this Agreement in the spaces provided below. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

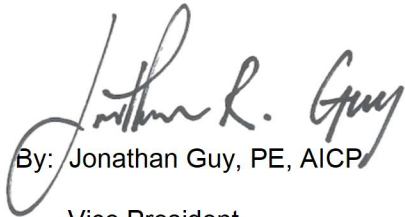
To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

(Remainder of page left blank intentionally)

We appreciate the opportunity to provide these services to you. Please contact us if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.


By: Jonathan Guy, PE, AICP
Vice President


Dillon Turner, PE
Project Manager

The Town of Kiawah Island

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

Client's Federal Tax ID: _____

Client's Business License No.: _____

Client's Street Address: _____

Attachment – Standard Provisions
Rate Schedule

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

- 1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
 - d. Arrange for access to the site and other property as required for the Consultant to provide its services.
 - e. Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Consultant as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
 - b. If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
 - c. If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - d. If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - e. The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.
- 5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an

electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

- 6) **Intellectual Property.** Consultant may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Consultant or its affiliates ("Intellectual Property") in the performance of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Consultant maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Consultant and its affiliates.
- 7) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify the Consultant.
- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

- 15) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
- a. If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.
 - b. The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
 - c. The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.
- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. If Client requires Consultant to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Consultant or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.



Kimley-Horn and Associates, Inc.

Hourly Labor Rate Schedule

Classification	<i>Rate</i>
Analyst	\$135 - \$185
Professional	\$180 - \$235
Senior Professional I	\$230 - \$310
Senior Professional II	\$300 - \$330
Senior Technical Support	\$140 - \$210
Support Staff	\$105 - \$125
Technical Support	\$110 - \$150

Effective through June 30, 2022

Subject to annual adjustment thereafter

Internal Reimbursable Expenses will be charged at 5% of Labor Billings

External Reimbursable Expenses will be charged at 15% mark-up, or per the Contract

Sub-Consultants will be billed per the Contract

Concept 14 – Beachwalker Drive at Kiawah Island Parkway





TOWN COUNCIL Agenda Item

TAB 8

IX. New Business

D. To Consider Approval of the Public Safety Committee Appointment

2022

Public Safety Committee

Members are appointed by the Mayor and Town Council and serve for one year terms. A member of Town Council shall serve as Committee Chairman. Terms expire January 31st.

Craig Harris, Chairman

Public Safety Director
4475 Betsy Kerrison Parkway
Kiawah Island, SC 29455
(843) 768-9166
charris@kiawahisland.org

***Carl Ritchie**

Kiawah Island Community Association
23 Beachwalker Drive
Kiawah Island, SC 29455
(843) 768-9194
carl.ritchie@kica.us

Yvonne Johnstone

Kiawah Island Golf Resort
Kiawah Island, SC 29455
(864) 480-2509
yvonne_johnstone@kiawahresort.com

Bill Thomae

112 Governors Drive
Kiawah Island, SC 29455
(843) 576-4083
william.thomae@yahoo.com

***new member to be appointed**

Julie Beier

Northwood Retail
Kiawah Island, SC 29455
(843) 768-6491
jbeier@northwoodretail.com

Dwight Williams

95 Wax Myrtle Court
Kiawah Island, SC 29455
(703) 608-9235
DWilliams@greyskyllc.com

Bonnie MacDonald

146 Hooded Merganser Court
Kiawah Island, SC 29455
(978) 387-0081
btooshoes@comcast.net

Maryanne S. Connelly

Council Liaison
4927 Green Dolphin Way
Kiawah Island, SC 29455
(973) 610-4889
mconnelly@kiawahisland.org