



TOWN OF SOUTHERN SHORES
TOWN COUNCIL REGULAR MEETING

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

Phone 252-261-2394 / Fax 252-255-0876

www.southernshores-nc.gov

PITTS CENTER

Tuesday, November 01, 2022 at 5:30 PM

AGENDA

Call Meeting to Order

Pledge of Allegiance

Moment of Silence

Amendments to / Approval of Agenda

Consent Agenda

1. Minute Approval
2. Surplus Resolution 2022.11.01

Presentations

3. Recognition of 9-21-22 Ultralight Crash Responders
4. Intern Introduction-Administration Dept., First Flight High School Senior-Zoe Kane

Staff Reports

Deputy Town Manager/Planning Director

Monthly Permit Reports

Planning Board Update

Police Chief

Fire Chief

Town Manager- Beach Nourishment Update

Town Attorney

General Public Comment (Limit: 3 minutes per speaker.)

Old Business

New Business

5. Ebikes-Educational presentation and definition of E-Bicycle, Proposal for revised ordinance for driving on beach.
6. Amendment to SSVFD Contract to Accommodate EMS Renovations at East Station

General Public Comment (Limit: 3 minutes per speaker.)

Council Business

Closed Session-N.C.G.S. § 143-318.11(a)(5)

Adjourn



TOWN OF SOUTHERN SHORES TOWN COUNCIL WORKSHOP MEETING

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

Phone 252-261-2394 / Fax 252-255-0876

www.southernshores-nc.gov

PITTS CENTER

Tuesday, September 20, 2022 at 9:00 AM

MINUTES

Call to Order

Pledge of Allegiance

Moment of Silence

Present

Mayor Elizabeth Morey

Mayor pro tem Matt Neal

Council Member Leo Holland

Council Member Paula Sherlock

Absent

Council Member Batenic

Amendments to / Approval of Agenda

Motion made by Council Member Holland to approve the agenda as presented, Seconded by Council Member Sherlock.

Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock

General Public Comment

None

Business Items

1. Resolution 2022.09.03- Overpayments of Occupancy Taxes-Campground

Town Manager Cliff Ogburn presented Resolution 2022.09.03 to Council for consideration. The agenda summary read as, recently Dare County was made award that campgrounds were collecting and paying occupancy tax which is no longer required by General Statute. This revenue was shared with Dare County, the Dare County Tourist Bureau, the county Beach Nourishment Fund and each of the six municipalities. The maximum exposure to the Town is about \$165,000. If the statute of limitations is three years, then the amount drops to about \$50,000. Those that paid this occupancy tax in error are entitled to a refund. A process will be established that ensures the Town is refunding its share of the overpayments.

Mayor Morey stated all the administrative duties, cost, and responsibility is on the part of the County of Dare, not the Town of Southern Shores.

Council Member Sherlock stated the refund will go to the individuals that paid the taxes, not the County. Town Manager Ogburn confirmed that is correct.

Motion made by Council Member Sherlock to approve Resolution 2022.09.03 as presented, Seconded by Council Member Holland. The motion passed unanimously.

Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Holland, Council Member Sherlock

2. Presentation from Kimley Horn – Trinitie Culvert replacement options

At the July 5, 2022 Council meeting, Council approved a contract with Kimley-Horn to provide conceptual level plans concerning the replacement of the aluminum pipe culvert on Trinitie Trail.

Kimley Horn representative Andrew Phillips presented findings regarding options for replacement of the Trinitie Trail Culvert. Kimley-Horn was asked to develop conceptual level structure plans for three different structural alternatives to replace the existing pipe arch culvert. The alternatives provided include a cast-in-place reinforced concrete flat slab bridge, a cored slab bridge, and a prefabricated buried arch structure. [PowerPoint is hereby attached as part of the minutes]

Option 1 and 2 were virtually identical with the exception that option one is a flat slab cast in place; option two is a core slab pre-casted. Both options would have a down time of 6 months to one year. The precast option would make for a shorter bridge closure, making it a better alternative. Option #3 is a precast arched bridge and road closure would be a little longer than the other alternatives. The new opening would be about 19 feet wide, three feet wider than the current culvert.

Mayor Morey asked about the timeframe for the acquisition of permits. Mr. Phillips estimated it would be 6-12 months.

Mayor Morey asked if NCDOT had a role in the project. Mr. Phillips stated the contractors typically do follow NCDOT standards and specifications because they are well written, but this project is not funded by NCDOT, so they have no jurisdiction over it.

Mayor Morey asked Kimley Horn representative Andrew Phillips to provide a low end and high-end cost estimate. Mr. Phillips stated if you take out the contingency and assume every quantity their firm looked at is accurate you could take the \$660,000 figure and take 60% of that to get the low estimate. The high end would be that number plus the contingency.

It was **Consensus of Council** that option #2 (precast core-slab) would be the better alternative out of the three options provided.

3. Budget Items for Discussion

The Town Council requested that staff provide a quarterly budget review. Staff requests that this initial review also serve to establish a potential framework for future reviews. Finance Officer Bonnie Swain provided an overview of the present financial position, fund balance analysis, as well as on any items to note in the months ahead.

Town Manager Cliff Ogburn provided an updated draft of the Capital Improvement Plan. He stated the timeframe has been narrowed to a five-year period and staff would request that this plan be approved each year in February so that items the Council would like to see included in the following fiscal year are included in the recommended budget. Items that staff would like to discuss for funding in the short term are highlighted in the plan and include:

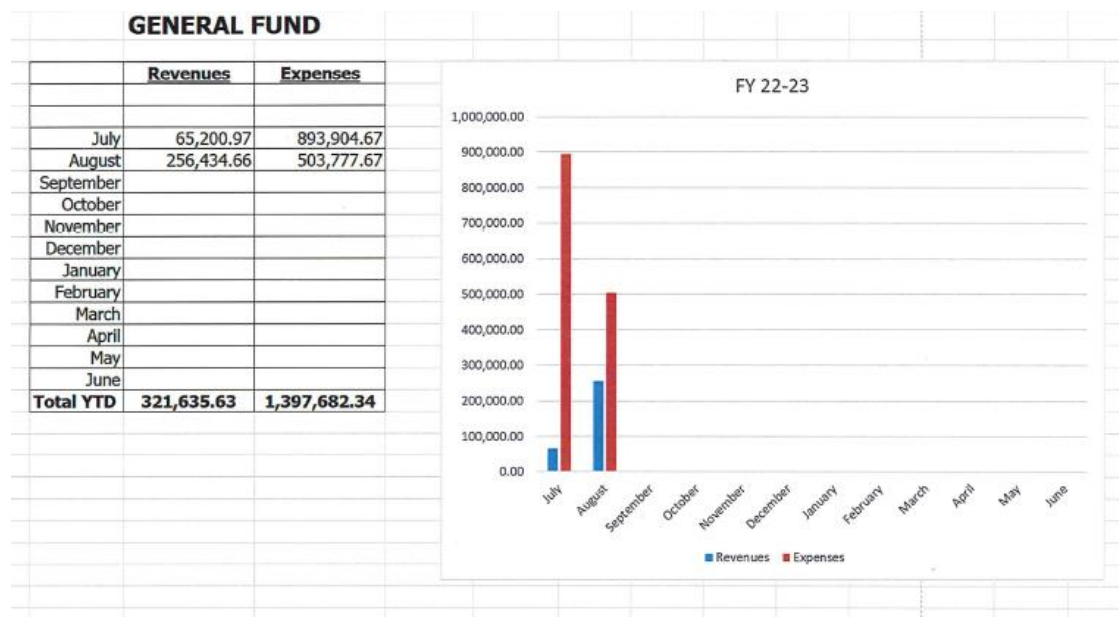
- Trinitie Culvert Replacement

- Additional Street/Pavement Work
- Path from Duck Road from Triangle Park to E Dogwood (applying for grant)
- Path from Hillcrest to Sea Oats (potential for second grant application)
- Chicahawk Sidewalk
- Public Works renovations
- Ginguite stormwater projects (project out to bid)

Finance Officer Bonnie Swain reviewed the July and August financials and although it is still early in the fiscal year, she highlighted the following:

- Interest revenue has started to grow once again, post covid. Expect interest revenue this year to be approximately \$225,000.00. She recommends any future budget amendment to come from this interest line first.
- Amicus Brief-funds from three entities has been received.
- Shared revenues will start to come in September; our shared revenues have increased by 2% because of our levy increase due to beach nourishment.
- Workman Comp and General Liability insurance is due the first day of the fiscal year, as it can be seen reflected in the expenditures.
- Staff has requested a new financial software program to enhance the budget process and financial reporting. A budget amendment will be coming in October. Offset from the interest income.
- Vacancies in the Police Department is causing increase in overtime. The department will need to increase the amount for advertising and medical testing.
- Sanitation Department has had an increase in tonnage and fuel surcharge, may require a budget amendment later.
- Public Works-need to advertise due to a vacancy in that department.
- Beach Nourishment Project-we have received all the money from the grant 1.4 million. Mobilization costs have been paid.

Mayor Morey asked Finance Officer Bonnie Swain if she felt confident in the large increase in interest money. Ms. Swain stated she was confident having received \$31,000 in the past two months. Tax revenue goes into the capital trust which fuels the interest revenue.



Revenues

Interest	FY 19-20	FY 20-21	FY 21-22	FY 22-23 ESTIMATED
	77,730	1,351	15,265	225,000

* Interest will be the revenue source (used first) for any needed budget amendments the remainder of this fiscal year)

Misc. Revenue

* Reflects money received from 3 entities (Town of Duck, DCTB and Duck Comm & Business Alliance) for Amnicus Brief for a total of \$6408 Currituck Co. paid their share in September.

Expenditures

Administration

*Insurance may need to be adjusted at a later date. Premiums for both our WC and PL insurance increased this year by \$6,500 due to cost of added equipment, vehicles and salary increases.

*A budget amendment will be presented at the October meeting to purchase financial software to assist with building the budget and financial reporting.

Cost is \$5,000 per year

Police

* A budget amendment will be presented at the October meeting to increase the advertising and medical testing line to fill 3 positions.

Cost will be \$4,500

Sanitation

* The months of July and August have shown an increase in tonnage and fuel surcharge. The total increase for the months of July and August is \$5,275

Public Works

* A budget amendment will be presented at the October meeting for advertising for a vacancy in the department.

Cost will be \$500

THE NORTH CAROLINA CAPITAL MANAGEMENT TRUST Average Annualized Monthly Net Yields - Government Portfolio

Month	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
January	.10	.12	.07	.05	.01	.01	.29	.42	1.20	2.26	1.46	.01	.01	
February	.07	.09	.06	.04	.01	.01	.33	.43	1.23	2.26	1.45	.01	.01	
March	.08	.11	.08	.06	.01	.02	.37	.51	1.37	2.28	.89	.01	.08	
April	.11	.10	.08	.04	.01	.03	.37	.57	1.55	2.29	.41	.01	.21	
May	.15	.08	.08	.04	.01	.04	.37	.64	1.61	2.28	.20	.01	.59	
June	.17	.04	.06	.01	.01	.04	.33	.73	1.71	2.24	.08	.01	.98	
July	.20	.02	.06	.01	.01	.06	.31	.84	1.80	2.22	.07	.01	1.52	
August	.20	.03	.05	.01	.01	.07	*.26	.88	1.81	2.03	.04	.01	2.14	
September	.16	.03	.04	.01	.01	.07	.26	.89	1.85	1.98	.02	.01		
October	.14	.03	.05	.01	.01	.08	.29	.91	2.03	1.78	.01	.01		
November	.12	.06	.05	.01	.01	.10	.29	.93	2.08	1.54	.01	.01		
December	.12	.08	.07	.01	.01	.19	.37	1.07	2.16	1.49	.01	.01		
Annualized Yield	.14	.07	.06	.03	.01	.06	.32	.74	1.70	2.05	.39	.01	.69	

*Portfolio was changed in August 2016 from the Cash Portfolio to the Government Portfolio.

Yields will fluctuate with changing market conditions and past performance is not an indication of future results.

While the Portfolio seeks to maintain a stable \$1.00 share price, there is no assurance that it will be able to do so. An investment in the Portfolio is not insured or guaranteed by the U.S. Government.

Not authorized for distribution unless preceded or accompanied by a current prospectus.

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Finance Officer Bonnie Swain reviewed projected revenues and expenditures through 2028. The growth percentage was projected from taking the average growth from fiscal years 18-22 and applied forward. Anticipated in 2028 is 7.9 million in revenues if it continues the growth, we have had the past five years. This is revenues over expenditures, but it does not take into consideration street projects. If you add the street projects in there you will have a deficiency.

	<u>FY 18</u>	<u>FY 22</u>	<u>\$ increase</u>	<u>% change</u>	<u>FY 28</u>	
Expenditures			from FY 18-FY 22	from FY 18-FY 22		
Administration Department	944,656	1,041,557	96,901	10.26%	1,148,398	
Code Enforcement & Inspections	245,974	324,981	79,007	32.12%	429,365	
Dept						
Fire Department	691,767	964,378	272,611	39.41%	1,344,419	
Ocean Rescue Services	161,550	176,000	14,450	8.94%	191,742	
Police Department	1,468,688	1,818,315	349,627	23.81%	2,251,172	
Public Works Department	389,150	576,770	187,620	48.21%	854,847	
Sanitation Services	650,166	826,717	176,551	27.15%	1,051,210	
Total	4,551,951	5,728,718	1,176,767	25.85%	7,271,154	
Revenues						
Property Taxes- Current Year	2,928,270	3,159,663	231,393	7.90%	3,409,341	
NCVTS- Current Year	102,375	108,604	6,229	6.08%	115,212	
Subtotal: Property and Vehicle Taxes	3,030,645	3,268,267	237,622	7.84%	3,524,553	
Land Transfer	248,575	570,551	321,976	129.53%	261,004	
Local Option Sales Tax	964,512	1,347,088	382,576	39.67%	1,881,414	
Occupancy Tax	1,014,531	1,471,890	457,359	45.08%	2,135,430	
Building Permits & Fees	156,815	169,578	12,763	8.14%	183,380	
	2,384,433	3,559,107	1,174,674	49.26%	4,461,227	
Subtotal General Fund Revenues	5,415,078	6,827,374	1,412,296		7,985,780	
	FY 17-18 Total	FY 18-19 Total	FY 19-20 Total	FY 20-21 Total	FY 21-22 Total	
Public Works Department - Streets	1,419,636	1,078,281	1,623,753	1,134,814	208,675	
Streets/Multi-Use Paths	497,482	1,007,724	1,032,488	688,008	156,547	
Beach Nourishment	922,154	70,557	88,998	446,806	52,128	
Storm Cleanup			502,267			
	FY 17-18	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23
use of FB to balance the budget	0	0	1,325,614	0	1,275,019	365,309

Council Member Holland stated the predictions do not consider any potential tax increase. Finance Officer Bonnie Swain that was correct. She stated a tax increase also changes your shared revenues. The amount of shared revenue is dependent on our levy. It not only depends on what Southern Shores does but what the other towns do as well.

Shared Revenue Percentages

FY 14-15	11.22
FY 15-16	10.72
FY 16-17	9.67
FY 17-18	10.06
FY 18-19	9.62
FY 19-20	9.45
FY 20-21	9.24
FY 21-22	9.19
FY 22-23	11.36 (beach nourishment increase)

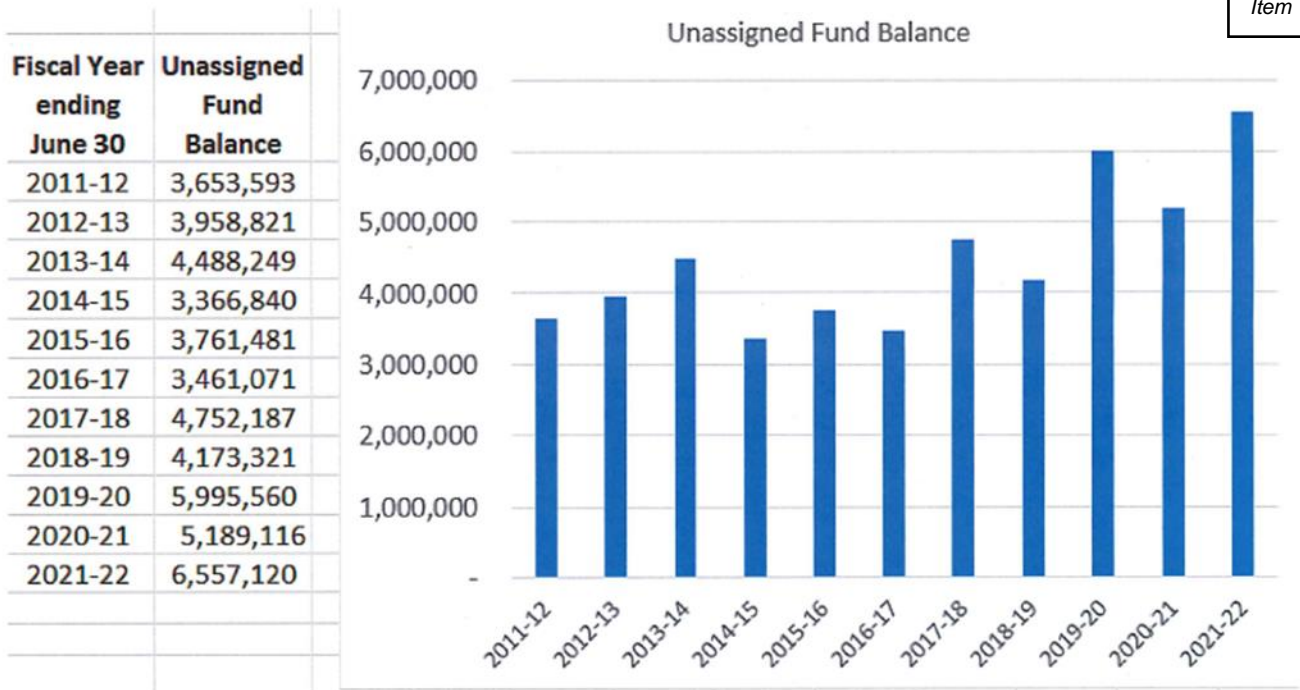
Mayor Morey asked if we were still the lowest of the municipalities? Finance Officer Bonnie Swain said that Manteo is probably the lowest.

Finance Officer Bonnie Swain reviewed an analysis of the unassigned fund balance, a document provided from the annual audit (Town Auditor Teresa Osborne will present all audit finding at the Council's October 5th meeting). The unassigned fund balance will be 6.5 million. If you back out the 3 million emergency fund balance resolution, it leaves 3.5 million for the Council to do as they see fit.

Mayor Morey asked what prompted staff to want to purchase another finance software? Town Manager Ogburn wanted to be able to provide public presentations of the budget that would link directly with the accounting software; producing a product which could highlight and graph so much more of the financials. Currently, staff develops the budget presentation manually adding bits and pieces.

Town of Southern Shores
Analysis of Unassigned Fund Balance 6-30-22

	<u>6/30/2021</u>	<u>CY Revenues over Expenses</u>	<u>Other Changes</u>	<u>6/30/2022</u>
Stabilization by State Statute:				
Accounts receivable	834,811	-	7,597	842,408
Encumbrances	<u>247,520</u>	<u>-</u>	<u>977,464</u>	<u>1,224,984</u>
	1,082,331	-	985,061	2,067,392
Prepaid expenses	6,115	-	(1,687)	4,428
Drug enforcement	9,491	-	-	9,491
Subsequent year's budget	1,270,519	-	(905,210)	365,309
LEOSSA	250,390	557	-	250,947
Powell Bill	-	131,134	-	-
Unassigned	<u>5,189,116</u>	<u>1,446,168</u>	<u>(78,164)</u>	<u>6,557,120</u>
Total GF fund balance	7,807,962	1,577,859	-	9,254,687
Unassigned fund balance				6,557,120
Working capital/fund balance policy				<u>(3,000,000)</u>
Remaining fund balance				3,557,120



Mayor Morey called for a 5-minute recess at 10:13 a.m.

Council reconvened at 10:19 a.m.

Town Manager Ogburn reviewed the Capital Improvement Plan, looking into a five-year window. The Trinitie culvert is not in the budget, but it could be placed in the plan. The fund balance has approximately 3.5 million dollars available. Council may want to do more overlay on the streets, rather than the patching proposed.

Town Manager Ogburn stated staff is looking to apply for a grant for a path from Duck Road from Triangle Park to East Dogwood (applying for grant) and then a path from Hillcrest to Sea Oats (potential for second grant application).

Council Member Holland stated the Tourism Board has a large quantity of groups wanting grant money this year, so you are more than likely to only receive a portion of the project funds.

Town Manager Ogburn stated he is thinking was to try and take advantage of an opportunity to try and get funding for Hillcrest to Sea Oats but that is a longer stretch, more expensive. Unless Council thinks it is worth applying, maybe just put it in the plan.

Mayor pro tem Neal stated it may make sense to move it to another budget year.

Town Manager Ogburn stated there may be other opportunities, the Parks and Recreation Trust Fund. If we can show a system of sidewalks that were connecting, they may look favorably upon that application.

Mayor pro tem Neal asked if there were potential state level grants. Town Manager Ogburn confirmed there were.

Mayor Morey stated instead of going for two grants from the Tourism Board, we should apply for just one, and go through these other potential grant opportunities that are from different funding sources for some other ideas. **Council agreed by consensus.**

Mayor pro tem Neal stated to focus on the more dangerous stretch, the triangle to East Dogwood this year.

Council Member Holland agreed that stretch was the priority.

Mayor pro tem Neal stated then go for a Tourism Grant next year for Hillcrest to Sea Oats or find additional funding.

Town Manager Ogburn stated staff is still pursuing the Chicahawk sidewalk. That is not budgeted, so that would be a use of fund balance. The Public Works Director has reached out to Florez Design, who originally put together the building code issues and needs. That went to bid but it was bad timing, but staff does want to pursue renovations to the Public Works building; condition space/ break room, renovated office and bathroom. Staff plans on pursuing this renovation now, rather than later.

Town Manager Ogburn stated the Ginguite stormwater project is currently out to bid, bids are due back at the end of the month. This is another use of fund balance, and all these items could be listed in the five-year plan. Staff encourages Council to think about the five-year funding plan.

Mayor pro tem Neal felt it was important to move ahead with the Public Works building. He also felt it was important to move ahead with the Trinitie Trail culvert, stating there might be grants for that as well.

Finance Officer Bonnie Swain stated the town did receive grant money for the Tall Pine Bridge.

Council Member Holland stated that grant was federal money.

Mayor Morey stated the unassigned fund balance does have federal money already allocated in it.

Town Manager Ogburn stated at some point to develop these plans, could Council consider revisiting stormwater plans/ document. He felt it would be appropriate to have staff and a Council Member or two revisit a stormwater plan so the projects could be incorporated into the CIP.

Town Manager Ogburn also requested at the appropriate time to revisit the pavement plan, although it is early, there is a million dollars budgeted and staff would like to be able to sit down with the same group so staff can figure out a plan and move forward. Also, there is a lot of projects on the CIP but they have not talked about prioritizing them. Some are just recognized and have not received a dollar amount.

Council Member Holland asked the Town Manager for an update to the Hickory and Wax Myrtle issue. Town Manager Ogburn stated the engineer just got the geotechnical data and he is continuing to work on the pavement.

Mayor Morey asked the manager in his talks with staff, is there is a project or a need that has not been discussed? Town Manager Ogburn stated we need to always be mindful of needs versus

wants. At some point, we will need to look at the Pitts Center and Town Hall and how to better utilize the space and make sure everything is up to building code. That was recognized a few years back when Florez did an assessment, and these items would get the buildings through some more years. The buildings will not last forever and will need to be addressed at some point.

Mayor Morey stated some technology has been updated.

Council Member Holland stated some structural issues may need to be brought up to code.

Mayor Morey stated it seems bringing things up to code in both buildings would be a minimum to start. Town Manager Ogburn stated that originally was paused due to the cost.

Mayor Morey stated it may cost more now and it may be something we just have to accept it.

Town Manager Ogburn stated he would add it to the CIP list.

Mayor pro tem Neal recommended thinking of some tangible things that can be accomplished, rather than a master plan down the road for the complex.

Mayor Morey asked if the items to address with the buildings could be placed on the January agenda. Did that give staff enough time? Town Manager Ogburn stated he would place it on the January agenda.

Mayor Morey stated we spend a lot of time talking about buildings and streets, but our human capital is also very important to the town and the community. Making sure our staff is getting all the resources they need is also important, so don't forget about that part.

The Town Manager stated he would come back to Council at a future meeting to gain more interest about the Council committees. Council agreed by consensus that they would be interested, and the mayor stated she would split the members evenly.

Mayor pro tem Neal asked if the engineering for Trinitie Trail needed to go out to bid? Town Manager Ogburn stated an RFQ would need to be put out.

Council requested consideration of Trinitie Culvert Bridge RFQ to be placed on the October agenda.



5-YEAR CAPITAL IMPROVEMENT PLAN

DRAFT - 9/12/2022

Item 1.

Department	source	Total	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27	Total
Beach Nourishment									
*Town Contribution	MSD	6,065,823	51,128	1,202,939	1,202,939	1,202,939	1,202,939	1,202,939	6,065,823
*County Contribution	BNF	4,371,401	4,295,819	52,017	23,565				4,371,401
*NC DEQ Grant	Grant	1,408,247	1,408,247						1,408,247
Department Total		11,845,471	5,755,194	1,254,956	1,226,504	1,202,939	1,202,939	1,202,939	11,845,471
Administration									
Municipal Complex Needs Assessment	CRF								
Building upgrades	FB								
New Municipal Complex	CRF								
Land Bank	GF								
Department Total									0
Fire									
(1) *Fire Department Debt Service	GF		314,000	314,020	314,020	314,020	314,020	314,020	1,884,100
Staff Salaries	GF	(1.2M / year)							
Radios	grant	150,000	25,000	25,000	25,000	25,000	25,000	25,000	150,000
Department Total			339,000	339,020	339,020	339,020	339,020	339,020	2,034,100
Police									
Department Total									0
Public Works									
**Building Upgrades	FB			150,000					150,000
Equipment									
Department Total				150,000					150,000
Planning									
File Storage Room	GF								
Department Total									0
(2) *Streets									
** additional work	GF/CRF			1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	5,000,000
Department Total				1,500,000	1,000,000	1,000,000	1,000,000	1,000,000	5,500,000
Bridges									
Tall Pine									
North Marina									
Dick White Bridge									
*culvert planning				40,000					40,000
**Trinitie Trail/Juniper Tr. Culvert	FB			1,000,000					1,000,000
Department Total				1,040,000					1,040,000
Canals									
(3)*Canal Dredging and Maintenance	GF			100,000	50,000	50,000	50,000	50,000	300,000
Department Total				100,000	50,000	50,000	50,000	50,000	300,000

	source	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27	Total
Sidewalk/Path Maintenance								
**NC 12 triangle to E Dogwood	FB/grant		180,000					180,000
**NC 12 Hillcrest to Sea Oats	FB/grant		330,000					330,000
**move Chickahauk sidewalk			65,000					65,000
priority 3				150,000				150,000
priority 4					150,000			150,000
priority 5						150,000		150,000
priority 6							150,000	150,000
Department Total			575,000	150,000	150,000	150,000	150,000	1,175,000

	source	Total	FY 21-22	FY 22-23	FY 23-24	FY 24-25	FY 25-26	FY 26-27	Total
stormwater									
**Ginguite	FB			75,000					75,000
future project				250,000					250,000
future project					250,000				250,000
future project						250,000			250,000
future project							250,000		250,000
								250,000	250,000
Department Total				325,000	250,000	250,000	250,000	250,000	1,325,000

* budgeted

**Consider use of FB - 2,300,000

TOTAL

23,369,571

1 cent tax = 164,710

- (1) Fire Department Debt Service = 25 years, 3.71% interest payment of \$314,020/year
 (2) see separate street CIP
 (3) increase annual appropriation from \$20,000 to \$50,000 in FY23 with a one time contribution of \$100,000.

Future Path Segments

Future Path Segments						
priority	road	segment	length (mi.)	Length (ft.)	estimate	
					5' width (4" thick)	8' width (6"thick)
1A	Ocean Blvd	Triangle to E Dogwood	0.63	3326.4	\$	85,821.12
1B		E Dogwood to Hickory	0.48	2534.4	\$	65,387.52
		full length	1.11 mi		\$	151,208.64
2A	Hickory	E Dogwood to NC 12	0.58	3062.4	\$	79,009.92
2B		NC 12 to beach access	0.26	1372.8	\$	35,418.24
		full length	.84 mi		\$	114,428.16
3	Hillcrest	Hickory to NC 12	0.9	4752	\$	122,601.60
4A	Sea Oats	E Dogwood to Hillcrest	1.2	6336	\$	163,468.80
4B		Hillcrest to NC 12	0.88	4646.4	\$	119,877.12
		full length	2.08 mi		\$	283,345.92
5	Wax Mrytle	E Dogwood to Hillcrest	1.2	6336	\$	163,468.80
6	Chickahauk	Cul-de-sac to Trinitie	0.41	2164.8	\$	55,851.84
7	Skyline Dr	full length	0.53 mi	2795	\$	72,111.00
8A	NC 12	(1) 158 - to E Dogwood	2.2	11616	\$	299,692.80
8B		(2) E Dogwood to 13th Ave	1.65	8712	\$	224,769.60
			3.85 mi		\$	524,462.40

Council Comments

Council Member Sherlock offered up parking at her property if staff needs to access the beach nourishment project.

Adjourn

Council adjourned the Tuesday, September 20th meeting by consensus at 10:40 a.m.



**Resolution Approving Conveyance of Personal Property to
A Nonprofit Organization
Pursuant to G.S. 160A-278**

WHEREAS, the Town of Southern Shores owns a 2005 Ford Escape with a declared value of less than \$1200; and

WHEREAS, North Carolina General Statute § 160A-280 authorizes a city or county to convey personal property for nonmonetary consideration to a nonprofit corporation if the governing board deems the property to be surplus, obsolete, or unused; and

WHEREAS, the Town of Southern Shores has determined that the personal property described above is surplus, obsolete, or unused; and

WHEREAS, the Town of Southern Shores finds that the public will benefit from the conveyance of the property described above by contributing necessary training tools to provide the best trained and well-equipped professional workforce possible.

THEREFORE, THE SOUTHERN SHORES COUNCIL RESOLVES THAT:

1. The Town Manager is authorized to execute all documents necessary to convey title to the Southern Shores Volunteer Fire Department.
2. The consideration for the conveyance is to ensure the fire department provides the highest level of safety to members of the organization and the citizens of Southern Shores, and to provide the best trained and well-equipped professional workforce possible.
3. In accordance with the notice requirements of N.C.G.S. § 160A-280, public notice of this resolution was given by posting on the town's community bulletin board.

Adopted this the ____ day of _____, 20__.

[Clerk Seal]

[Mayor/Chairman Signature]



AGENDA ITEM SUMMARY FORM

MEETING DATE: November 1, 2022

ITEM TITLE: E-Bikes & Driving on Beach Ordinance

ITEM SUMMARY: Educational presentation and definition of E-Bicycle, Proposal for revised ordinance for driving on beach and riding E-Bikes on town sidewalks/multiuse paths.

STAFF RECOMMENDATION: Council consider having staff finalize the proposed beach driving ordinance as presented and local ordinance excluding E-Bicycles from sidewalks/multiuse paths in Southern Shores.

REQUESTED ACTION: Approve as requested

E-BICYCLE

North Carolina



NC-G.S. 20-4.01 (DEFINITIONS)

- **(7a) Electric Assisted Bicycle.** – A bicycle with two or three wheels that is equipped with a seat or saddle for use by the rider, fully operable pedals for human propulsion, and an electric motor of no more than 750 watts, whose maximum speed on a level surface when powered solely by such a motor is no greater than 20 miles per hour.

* Rules of the road apply to e-bikes, same as a bicycle. Note – Operator must be 16 years of age or older.

NC-G.S. 20-4.01 (DEFINITIONS)

- (27 i.) **Motor-driven bicycle.** – A vehicle with two or three wheels, a steering handle, one or two saddle seats, pedals, and a motor that cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface. This term shall not include an electric assisted bicycle as defined in subdivision (7a) of this section.

NC-G.S. 20-4.01 (DEFINITIONS)

- (27 j.) **Moped.** – A vehicle, other than a motor-driven bicycle or electric assisted bicycle, that has two or three wheels, no external shifting device, a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 30 miles per hour on a level surface. The motor may be powered by electricity, alternative fuel, motor fuel, or a combination of each.

NORTH CAROLINA'S ELECTRIC BICYCLE LAW

NORTH CAROLINA'S ELECTRIC BICYCLE LAW FOR THE ROAD

- E-bikes are defined as "electric assisted bicycles," so long as the electric bicycle's motor is under 750w, has a maximum speed of 20mph, and has operable pedals. The same rules of the road apply to both electric bicycles and human-powered bicycles.
- Electric bicycles are not subject to the registration, licensing or insurance requirements that apply to motor vehicles.

eMTB GUIDELINES

- On federal, state, country and local trails, electric mountain bike (eMTB) access varies significantly.
- Generally, any natural surface trail that is designated as open to both motorized and non-motorized uses is also open to eMTBs.
- eMTBs may not be allowed on trails managed for non-motorized activities.
- Do not ride your eMTB in areas where the local rules are unclear. Ride legally and only on authorized trails to show that mountain bikers are responsible trail users.
- When in doubt, ask your local land manager about access to specific trails. Local land rules change frequently.

CHECK OUT

- A map of great eMTB rides at peopleforbikes.org/emtb
- eMTB "Adventures" at peopleforbikes.org/electric-bikes

With an electric bicycle, bicyclists can ride more often, farther, and for more trips.

Electric bicycles are designed to be as safe as traditional bicycles, do not compromise consumer safety, and benefit bicyclists who may be discouraged from riding a traditional bicycle due to limited physical fitness, age, disability or convenience.

In many states, electric bicycles are regulated under antiquated laws primarily aimed at combustion engine vehicles such as mopeds or scooters. PeopleForBikes is clarifying state laws governing the use of electric bicycles in the U.S. Every state's law is different, but the objective is to ensure that low-speed electric bicycles are regulated similarly to traditional, human-powered bicycles.

- Helmets are not required but the age minimum for electric bicycle use is 16. Electric bicycles are allowed on sidewalks if bicycles are allowed.
- State law does specifically address whether electric bicycles are allowed on bike paths. Consult your local authority or agency for information about whether electric bicycles are permitted on bike paths.

*The following North Carolina laws are referenced: N.C. Gen. Stat. § 20-4.1 (1) (a) & (b).

NORTH CAROLINA'S ELECTRIC BICYCLE LAW FOR TRAILS

- LOCAL: Consult your local land management agency.
- STATE: According to the North Carolina Division of Parks and Recreation, Class 1, 2 and 3 electric bicycles allowed wherever bikes are allowed. Contact the department for the most up to date information. PeopleForBikes is monitoring this policy and will update this document as needed.
- FEDERAL: The majority of public lands managed for recreation in North Carolina are under the jurisdiction of the U.S. Forest Service, where eMTBs are considered motorized vehicles and have access to motorized trails. Contact the U.S. Forest Service Southern Regional Office for more information.

GREAT eMTB RIDES IN NORTH CAROLINA

- Lake Norman State Park
Statesville | 26 miles
- Lake James State Park
Nebo | 12.9 miles



Learn more at PeopleForBikes.org/electric-bikes

- Blogs and webinars
- Electric bicycle laws around the country
- Electric bicycle statistics and research
- Buying guide
- Retailer materials
- eMTB management resources

PROPOSED E-BIKE ORDINANCE

- Sec. 20-12. - Use of **Electric Assisted Bicycle (E-Bike)** on town sidewalks and multi-use paths.
- **NC GS – 20-4.01-7a Definition- Electric Assisted Bicycle.** – A bicycle with two or three wheels that is equipped with a seat or saddle for use by the rider, fully operable pedals for human propulsion, and an electric motor of no more than 750 watts, whose maximum speed on a level surface when powered solely by such a motor is no greater than 20 miles per hour.
- **(a) No person operating an electric assisted bicycle shall go or ride upon any town sidewalk or multi-use path, except to cross at a designated crosswalk or at a street intersection.**

DRIVING ON THE BEACH



PROPOSED REVISED ORDINANCE DRIVING ON BEACHES

Section 20-109. Driving on the Beach-

- It shall be unlawful for any person to operate any vehicle of any type, including but not limited to; motor vehicle, pickup truck, airplane/helicopter, beach buggy, jeep, motorcycle, bicycle, E-bicycle, any; one, two, three or four wheeled vehicles powered by any type of motor or physically propelled on the ocean beach area within the Town of Southern Shores.
- This shall not apply to Ocean Rescue, Fire, Police, USCG, Public Works or other town authorized entities such as beach survey/nourishment contractors, turtle (NEST)volunteers, Authorized Ocean/Sea mammal rescue/removal entities, authorized commercial fishing, or Extreme Emergency situation(s).

Thank You & Questions



Chief David M. Kole

Current Beach Driving Ordinance

- Sec. 20-109. - Driving or landing aircraft on beaches.
- It shall be unlawful for any person to operate any motor vehicle or land or take off in any aircraft, except in case of emergency, within the following described beach area in the town: beginning at the northern boundary line of the town and running thence in a southerly direction along the oceanfront with the low tidewater line to the southern boundary line of the town; provided that this section shall not apply to motor vehicles operated upon any regularly established or dedicated road or driveway on private property by the owners of such property, members of their immediate family or by bona fide guests with the written permission of such owner nor shall it apply to the official operation of motor vehicles or aircraft belonging to or used by the United States Coast Guard Service; and provided that this section shall not apply to the operation of motor vehicles or automotive equipment belonging to and used and operated by commercial fishermen while such fishermen are actually engaged in the fishing or setting of nets or seines from or in the ocean; provided that nothing in this section shall be construed to authorize, permit or allow commercial fishermen or any other person to drive across, enter upon or conduct their fishing operations on any private property other than that owned or leased by them except by permission of the owners in the above-described area.
- (Code 1988, § 5-82; Ord. No. 82-0028, § 27, 2-2-1982)



AGENDA ITEM SUMMARY

MEETING DATE: November 1, 2022

ITEM TITLE: Amendment to SSVFD Contract to Accommodate EMS Renovations at East Station

ITEM SUMMARY: Dare County is in the process of making several renovations and improvements for buildings that house their Emergency Medical Services personnel and equipment. The County is proposing to demolish the East Station in Southern Shores located at 28 East Dogwood Trail. The County would then build a new facility for their use with space provided for use by the Southern Shores Volunteer Fire Department, Inc. (SSVFD). The property and building are owned by Fire Service Real Estate (FSRE) and utilized by the SSVFD.

In February of 2019 the Town and FSRE entered a contract that will now need to be amended to permit the EMS project described above to move forward. It is important to note that in the event the contract is terminated as a result of the SSVFD no longer being able to provide the Town fire protection services, the Town would have the right to take ownership of all Real Property and the Personal Property Assets including the East Station.

Attached, you will find the current contract as well as the proposed contract. There are two sections of the contract that need amending.

Section **(9) Permission to Use facilities** can now be removed entirely. When the 2019 contract was approved, the new Fire Station was still under consideration. Once the Fire Station was built, an easement from the Town over property utilized by the Public Works Department would be provided. In exchange for the easement, the Town would be permitted to use a portion of the East Station. These items have been settled and therefore are no longer applicable to the contract.

As mentioned above, the Town was granted use of the East Station as a condition of the provided easement. The new station is being designed to accommodate emergency services and meet the needs of Dare County EMS and the SSVFD. Providing space at this location for use by the Public Works Department would restrict the ability to meet those needs. Dare County has committed to providing the Town the equivalent space lost due to the new construction.

Section **(10) Additional Property Rights, Obligations and Covenants** contains the other amendments needing your approval to address the demolition and future use of the building. The new contract addresses, among other things, the right for FSRE or the SSVFD to lease the East Station, requires Town Approval of all plans for use of the East Station moving forward, and acknowledges conditions of the mortgage currently held by the FSRE.

STAFF RECOMMENDATION: Staff recommends the contract be amended as presented.

REQUESTED ACTION: A motion to authorize the Mayor to enter into the Amended and Restated Fire Services Contract between the Town and the Southern Shores Volunteer Fire Department and Fire Service Real Estate and to enter the associated Memorandum of Contract for recording at the Dare County Register of Deeds.

ATTACHMENTS: Current Fire Services Contract with proposed edits marked CURRENT.

Clean copy of new contract with amended language indicated in red type marked PROPOSED.

HORNTHAL, RILEY, ELLIS & MALAND, L.L.P.

ATTORNEYS AT LAW

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J. FRED RILEY

RETIRED
MARK M. MALAND
THOMAS L. WHITE, JR.

OTHER OFFICES
ELIZABETH CITY, NC
COLUMBIA, NC

March 8, 2019

Mr. Peter Rascoe
Town of Southern Shores
5375 N Virginia Dare Trail
Southern Shores, NC 27949

HAND DELIVERED

Re: Town of Southern Shores - Fire Department Financing

Enclosed please find the Original signed Fires Services Contract and Memorandum of the Contract and the Recorded Original of the Memorandum of Contract from Dare County. If you have any questions or concerns, please give me a call.

Sincerely yours,



Kristine Rodman
Legal Assistant

NORTH CAROLINA
DARE COUNTY

**AMENDED AND RESTATED
FIRE SERVICES CONTRACT
BETWEEN THE TOWN OF SOUTHERN SHORES,
SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.,
AND FIRE SERVICE REAL ESTATE, INC.**

THIS AMENDED AND RESTATED CONTRACT AND AGREEMENT (the "Contract"), dated as of February 26, 2019 (the "Contract Date"), by and between TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation (the "Town"); SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC., a North Carolina nonprofit corporation (the "Fire Department"); and FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation ("FSRE") (the Town, the Fire Department and FSRE collectively the "Parties").

WITNESSETH:

WHEREAS, pursuant to the Charter of the Town and powers granted the Town by North Carolina General Statutes §160A-11 and §160A-17, the Town may enter into a continuing contract for the performance of services; and

WHEREAS, the Fire Department was established and exists under applicable State and local laws for the purpose of limiting, reducing, or preventing damage or personal injury caused by fire or other emergency, with headquarters in the Town's boundaries; and

WHEREAS, currently the Fire Department provides the Town services to prevent, limit, and reduce damage or personal injury caused by fire or other emergency under a contract dated February 1, 2009 and scheduled to expire on June 30, 2019 (the "2009 Fire Department Contract"); and

WHEREAS, the Fire Department has conveyed certain of its former improved properties to FSRE; and

WHEREAS, such conveyed improved properties are described in a Deed of Gift recorded January 30, 2009 in Book 1790, Page 153 of the Dare County Registry, are located at 15 South Dogwood Trail (the "Active Fire Station") and 28 East Dogwood Trail (the "Inactive Fire Station") (collectively the Real Property); and

WHEREAS, the Real Property is provided by FSRE to the Fire Department to assist the Fire Department is fulfilling the services to the Town required under the 2009 Fire Department Contract; and

WHEREAS, the Town and FSRE are parties to a contract entitled, "Contract Between the Town of Southern Shores and Fire Service Real Estate, Inc." dated February 1, 2009 (the "2009 FSRE Contract"); and

WHEREAS, certain provisions of the 2009 FSRE Contract are contained in that certain Memorandum of Agreement dated February 26, 2009 and recorded in Book 1793, Page 146, Dare County Registry (the "2009 Memorandum of Agreement"); and

WHEREAS, the Parties entered into a new continuing contract, dated November 7, 2018 (the "Original Contract Date"), effective July 1, 2019 (the "Effective Date"), for the purpose of the Fire Department continuing to provide services for the Town to prevent, limit, and reduce damage or personal injury caused by fire or other emergency; and

WHEREAS, the Parties entered into and recorded a Memorandum of Contract dated November 7, 2018 and recorded in Book 2273, Page 371, Dare County Registry (the "2018 Memorandum of Contract"); and

WHEREAS, the Parties now desire to make certain changes to the Contract; and

WHEREAS, the term "Contract Date" as used herein shall mean the date of this Amended and Restated Contract and not the Original Contract Date.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties mutually contract and agree as follows:

- (1) **CONTRACT TERM**- The effective term of this Contract shall commence on July 1, 2019, and shall continue for a period of ten (10) years thereafter. In the event a longer term is necessary for the Fire Department to qualify for any long-term financing of approved debt, the Parties mutually agree to cooperatively and in good faith negotiate an amendment to this Contract, upon such terms and conditions as may be reasonably acceptable to the Parties, extending the term. A year within the terms of this Contract shall be the Town's fiscal year running from July 1 of one calendar year through midnight of June 30 of the following calendar year.
- (2) **SERVICES PROVIDED**- The Fire Department agrees to furnish and provide continuing Fire Protection Service to all properties lying within the incorporated limits of Southern Shores, NC, by promptly dispatching, upon call from the Dare County Central Communications voice call or paging system or upon notification of a fire or emergency by any other means, the Fire Department's firefighting and rescue equipment and adequate certified and qualified personnel to operate the same, and then making diligent efforts to control and extinguish all fires, and control or mitigate emergencies. In providing services under this Contract, the Fire Department shall be considered the "Fire Department" of the Town as described in Article 14 of Chapter §160A of the North Carolina General Statutes ("NCGS"), and the Fire Department's Fire Chief shall be considered the "Fire Chief" of the Town, with all the typical associated and regulatory duties and responsibilities of a Fire Chief of a Fire Department in the State of North Carolina, including but not limited to those broad duties as described in NCGS §160A-292. The term "Fire Protection Services" shall also include but not be limited to necessary clearing of the public streets of the Town following any event which causes the blockage of any street, sufficient to allow the passage of any vehicle or apparatus of the Fire Department. In the event of a declaration of a major disaster, the Fire Department shall,

upon the Town's request, further assist Town staff and contractors with clearing Town streets of downed trees to the extent of Fire Department's resources.

- (3) **DOI CERTIFICATION AND IRS STATUS-** The Fire Department shall, at all times, remain certified by the North Carolina Department of Insurance (DOI) and its Office of State Fire Marshall (OSFM), or any successive governmental agencies responsible for fire department certification in the State of North Carolina, with a public protection classification rating of not less than PPC 9S as that term is currently interpreted and defined under Section .0900 of Subchapter 05A, Chapter 05 of Title 11 of the North Carolina Administrative Code (NCAC). The Fire Department shall, at all times, maintain effective Mutual Aid Agreements with each of the fire departments serving jurisdictions contiguous to the Town of Southern Shores. During the term of this Contract, the Fire Department shall maintain its status as a nonprofit corporation and tax-exempt status under Section 501 (c)(3) or 501 (c)(4) of the Internal Revenue Code, and shall properly and timely file annually any required IRS Form 990.
- (4) **PROVISION OF SERVICES-** The Fire Department shall provide Fire Protection Services to the Town in a manner that is consistent with NC General Statutes, the NC Administrative Code, and any applicable adopted Town ordinances and policies, including but not limited to the Town's Emergency Management Plan, as said policies, ordinances and plans may be amended and/or modified by the Town from time to time in the Town's discretion or as may be required by applicable law. The Town understands and acknowledges the Fire Department shall use its own means and methods of performance, which shall not be subject to control, direction, or supervision of the Town. Subject to the provisions of this Contract, all firefighting equipment and personnel necessary and proper for the performance of this Contract shall be provided by the Fire Department at its sole cost and expense, and all persons engaged in fighting fires pursuant to the provisions of the Contract shall be subject to the exclusive control, direction, education, training, and supervision of the Fire Department. The Town shall not have any right or power with respect to the employment, control, direction, education, training, supervision, suspension, or discharge of any person who may engage in firefighting services or activities in the Fire Department's performance of its obligations under this Contract. When considering whether to provide additional funds for the acquisition of real property to be used by the Fire Department in performing its obligations under this Contract, the Town may, in its discretion, elect to acquire and retain title to such real property and then make the real property available to the Fire Department, through one or more leases, licenses or through other means, for the Fire Department to use to perform its obligations under this Contract.
- (5) **PROHIBITION OF TOWN INTERFERENCE WITH FIRE DEPARTMENT-** Pursuant to the terms of this Contract and by adopted policy as necessary, the Town shall not interfere with personnel of the Fire Department in the discharge of duties in providing any services to the Town under this Contract except as may be required by law.
- (6) **DEBT-** In seeking to incur any debt for acquisition, construction, or repairs for operations, the Fire Department understands that the cost of such debt shall be fully reflected in its annual budget submitted to the Town and as such must be approved by the Town as a budget expense before an appropriation is made by the Town to cover any additional debt

service expense approved as a part of the Base Compensation as described in Paragraph (11) (a) below.

- (7) **ANNUAL PRESENTATION OF PROPOSED BUDGET AND AUDIT**- Annually, the Fire Department shall present the Town with (1) a fiscal year-end audit, completed by a qualified North Carolina Certified Public Accountant, determining the financial condition of the Fire Department as well as the financial condition of FSRE, and (2) a proposed budget, duly adopted by the Fire Department's Board of Directors, projecting operations for the upcoming year.

(a) The budget shall be in a form and level of detail that is mutually agreed upon and shall include, at a minimum, specific projected revenues and expenses for operations, capital acquisition, and debt service. The budget shall be submitted using the same time schedule required of Town departments but no later than April 1 of each year. The budget shall provide sufficient information for the Town to determine all projected and legally obligated expenses reasonably anticipated by the Fire Department for the upcoming year, showing all projected expenses to be covered by the Base Compensation including any debt service expenses, and to determine all reasonably anticipated streams of revenues. The Fire Department shall provide an official familiar with the submitted budget to appear before the Town Council at the Town Manager's request to discuss the budget in open session of a public meeting of the Town Council.

(b) The fiscal year-end financial audit shall be conducted by a reputable Certified Public Accounting firm. The audit shall result in the production of a written audit report detailing the financial status of both the Fire Department and FSRE. The Fire Department shall use its best efforts to assure that a copy of the written audit report will be presented to the Town no later than November 15th of each calendar year.

- (8) **STRATEGIC PLAN**- The Town acknowledges that significant capital projects may be required during the term of this Contract to support the Fire Department, including but not limited to possible construction of a new fire station, possible acquisition of replacement vehicles, fire engines, and apparatus, and possible employment of firefighters. By no later than April 1, 2020, the Fire Department shall develop and present to the Town a long-term, ten-year Strategic Plan outlining projected dates when the Fire Department believes such construction, acquisition, and replacements and employments should occur and with projected costs. The Strategic Plan shall be updated annually by the Fire Department and presented to the Town by no later than April 1 of each succeeding year. When considering whether to provide additional funds for the acquisition of real property to be used by the Fire Department in performing its obligations under this Contract, the Town may, in its discretion, opt to acquire and retain title to that real property itself and then make the real property available to the Fire Department, through one or more leases or through other means, for the Fire Department to use to perform its obligations under this Contract.
- (9) **PERMISSION TO USE FACILITIES**- Each of the Parties acknowledges a mutual desire to cooperate with the other Parties in ensuring day-to-day operations are conducted in the best interest of the citizens of the Town. As further consideration for this Contract, each

party agrees the use of certain properties by the other party for day to day operations shall be permitted as follows:

- (a) In the event the Town Council approves a final construction bid amount for financing the construction costs of a new fire station, the Town agrees to grant to FSRE, as an appurtenance to FSRE's property located at 15 South Dogwood Trail, Southern Shores, NC, a permanent, perpetual and non-exclusive easement over, under and across a portion of the Town's property located at 27 Pintail Trail, Southern Shores, NC, for the sole and limited purpose of "maintaining an open area for vehicle parking, vehicle turning, and outdoor training, with no permanent structures to be constructed, erected or otherwise maintained within the Easement Area." At the time such easement is granted by the Town, the Easement Area shall be described on a survey prepared by a licensed North Carolina surveyor, a copy of which shall be attached to the Deed of Easement. The Town shall not bear any expense associated with the preparation of such survey. The survey shall depict an Easement Area of approximately 200 linear ft. by 58 linear ft. portion of the Town's property located at 27 Pintail Trail, and shall share a common boundary with, and is situated directly adjacent to, the Fire Department's current fire station at 15 South Dogwood Trail, Southern Shores, NC. The Deed of Easement shall be recorded by FSRE or the Fire Department in the Dare County Registry at the expense of FSRE or the Fire Department. FSRE and the Fire Department shall be solely responsible for its use of such easement and, to the extent permitted by applicable law, shall, to the extent covered by applicable insurance, indemnify, defend, and hold the Town harmless for any loss or costs and in any actions whatsoever due to the Fire Department's and/or FSRE's use as described herein.
- (b) In the event FSRE and/or the Fire Department constructs a new fire station at 15 South Dogwood Trail, Southern Shores, NC, FSRE shall grant to Town a non-exclusive, permanent and perpetual easement over and across FSRE's Property and appurtenant to the Town's property located at 27 Pintail Trail, Southern Shores, NC, for the sole and limited purposes of "(i) parking Town employees' vehicles in the Easement Area, and (ii) ingress, egress, and access by pedestrians and vehicles between Pintail Trail and the Town's property located at 27 Pintail Trail, Southern Shores, NC;" said access being located where such access is currently located and being similar and in proximity to that easement granted reserved and granted to the Town in the Memorandum of Agreement recorded March 3, 2009 in Deed Book 1793, Page 146, Dare County Registry. The Deed of Easement contemplated by this Section 9(b) shall be in a form reasonably satisfactory to the Town and shall be recorded in the Dare County Registry by the Town at the Town's expense. A survey depicting the easement area for this Deed of Easement shall be prepared by a surveyor licensed in North Carolina and procured by FSRE and/or the Fire Department at the sole expense of FSRE and/or the Fire Department.
- (c) The Town utilizes the Town's public works property located at 27 Pintail Trail, Southern Shores, NC in part for the Town's storage of inert material. In the event the easement described in Section 9(a) above is granted by the Town, the Town will no longer be able to use the Town's public works property located at 27 Pintail Trail,

Southern Shores, NC for the Town's storage of inert material. As part of the consideration for the easement which the Town has agreed to grant under Section 9(a) of this Contract, FSRE and the Fire Department will grant to the Town at the same time the Town grants the easement described in Section 9(a) above, an exclusive, perpetual, permanent and non-revocable use and license coupled with an interest, for the Town's exclusive use of (i) a certain enclosed portion (largest-sized bay) of the building known as the inactive East Dogwood Trail Fire Station located on property owned by FSRE at 28 East Dogwood Trail, Southern Shores, NC (the "Inactive Station"), for Town storage purposes, and (ii) an open paved area of approximately 50 feet by 75 feet in size located in the Inactive Station's rear parking area for non-intrusive storage of inert earthen material by the Town. The Town shall be solely responsible for its storage and use and, to the extent permitted by applicable law, shall indemnify, defend, and hold the Fire Department and FSRE harmless for any loss or costs and in any actions whatsoever due to the Town's use as described in this subsection (c).

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry contained in this Section 9.

(10) ADDITIONAL PROPERTY RIGHTS, OBLIGATIONS AND COVENANTS-

- (a) **Right of First Negotiation-** During the term of this Contract, in the event the Fire Department or FSRE contemplates or considers the sale of any real property owned by FSRE or the Fire Department, the Town shall have the right to be the first party to enter negotiations and to make an offer to purchase such real property.
- (b) **Right of First Refusal-** In the event of unsuccessful negotiations and/or in the event FSRE or the Fire Department receive a bona fide offer from a third party which is acceptable to FSRE and/or the Fire Department for the purchase of any or all of the Real Property, shall give written notice by certified mail, return receipt requested, to the Town of the existence and terms and conditions of such offer, furnishing the Town with a correct and true copy of such offer, and the Town shall have sixty (60) days thereafter to notify FSRE and the Fire Department that the Town agrees to purchase the same property on the same terms and conditions as are contained in such offer. If the Town declines to make such offer, or fails to reply to FSRE's or the Fire Department's written notice of such offer, within such sixty (60) day period, FSRE or the Fire Department may accept such offer from the third party. This right of first refusal shall continue to be in effect until (1) the conveyance of such property pursuant to the terms of this Right of First Refusal, or (2) thirty (30) years after the Effective Date, whichever occurs first. Any written notice by FSRE or the Fire Department to the Town of the right of first refusal shall not relieve FSRE or the Fire Department of their obligation under this Right of First Refusal to give further notices of right of first refusal upon any future offers by third parties for any of the Real Property.
- (c) **Covenant to Not Demolish Property or Diminish in Value or Transfer-** Neither the Fire Department nor FSRE shall demolish, raze, or cause diminishment of value of,

or to, any improved real property owned by FSRE or the Fire Department during the term of this Contract. Neither the Fire Department nor FSRE shall mortgage or encumber the any of the Real Property without the Town's prior written consent in each instance.

- (d) **Use Covenant-** The Real Property shall only be used for Fire Protection Services and the other purposes and easements expressly described in this Contract, and for no other purpose, without the prior written consent of the Town in each instance.
- (e) **Net Proceeds from any Property Sales-** Any net proceeds realized by the Fire Department or FSRE from the sale of any of the Real Property shall first be applied towards the principal balance owed by FSRE and/or the Fire Department on any remaining outstanding loan made to FSRE and/or the Fire Department for the construction of a new fire station at 15 South Dogwood Trail, Southern Shores, NC, and next towards any succeeding outstanding loan balances, whether secured or unsecured, in order of greatest amounts owed. Any proceeds remaining after said loans have been paid off shall be transferred to the Fire Department (if not already in the Fire Department's possession) and shall then be fully applied by the Fire Department to offset the Base Compensation to be paid by the Town in the next fiscal year.
- (f) **Notice to Town-** FSRE shall provide both the Fire Department and the Town with at least (20) days written notice of its intentions prior to encumbering, pledging or otherwise disposing of any portion of the Real Property in any manner other than a lease to the Fire Department or the Town for the purposes of providing fire services. Said notice shall include any information pertinent to the action FSRE intends to take, including but not limited to the parties, the consideration and the description of any parcel subject to the action intended by FSRE. FSRE shall provide any parties involved with the intended action full disclosure of this Contract, including its exhibits.
- (g) **Required Lease.** FSRE shall enter into a lease of the Real Property with the Fire Department. Upon termination of any lease existing at any time between FSRE and the Fire Department, the Town shall have the right of first refusal to enter into a new lease of the Real Estate with FSRE as against all other parties except the Fire Department.

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 10.

(11) **COMPENSATION TO THE FIRE DEPARTMENT-**

- (a) The Town's fiscal year 2018-2019 appropriation to the Fire Department for the provision of fire protection services is \$545,914. The amount of funding provided by the Town each year shall be referred to as the "Base Compensation," which Base Compensation for each year of this Contract shall be determined by the annual

budget that is approved by the Town for continued operations of the Fire Department. To reiterate, \$545,914 shall be considered the base compensation for FY 2018/2019. No annual total compensation shall ever be less than the Base Compensation, plus annual debt service expenses, which have been specifically approved by the Town Council. Base Compensation shall include the debt service incurred by the Fire Department, if any, for FY 2018-2019 for the Fire Department's financing of the construction of a new fire station at 15 South Dogwood Trail, Southern Shores, NC. Once any debt as approved by the Town's governing board has been satisfied, the corresponding debt service expense shall no longer be considered a part of the Base Compensation.

- (b) Upon approval by the Town's governing board of an annual budget submitted by the Fire Department, the Town shall appropriate, and subsequently disburse in two (2) equal amounts bi-annually and no later than August 1 and February 1 respectively, funds to compensate the Fire Department in amounts equal one-half of the Base Compensation (except to the extent that the Base Compensation is paid out based on some other agreed-upon payment schedule) approved by the Town provided for that year.
 - (c) The Fire Department may seek other sources of revenue including, but not limited to, gifts, donations, grants, sales of promotional items, additional fire protection service customers (but only after obtaining the Town's prior written approval in each instance for the Fire Department to serve those other customers), and fees for service (but only after obtaining the Town's prior written approval in each instance to charge the said fees for service).
 - (d) The Town acknowledges that the Fire Department is currently a party to a contract with Dare County to provide Fire Protection Services to Martin's Point Subdivision.
- (12) **EXPANDED SCOPE/ADDITIONAL WORK-** The Town and Fire Department agree that at any time during the term of this Contract either party may initiate discussions regarding the expansion of the scope of the Contract to include expanded or additional services to be provided to the Town by the Fire Department. If such expansion of scope is agreed to and implemented, the financial terms and other terms of this Contract shall be changed to reflect the new scope.
- (13) **AVAILABILITY OF RECORDS-** As the Fire Department is a contractor of the Town, agents of the Town and/or any citizen may, upon reasonable request and notice, inspect the financial records of the Fire Department by appointment with the Treasurer or leadership of the Fire Department during normal business hours.
- (14) **INSURANCE OBLIGATIONS-**
- (a) The Fire Department agrees to maintain insurance coverage, the premiums for which shall be included in the budget of the Fire Department, said coverage to be as follows:

(i) The insurance coverage to be maintained by the Fire Department shall be as follows:

a) Workers' Compensation: Coverage to apply to all volunteers for statutory limits in compliance with the applicable State and Federal laws. The policy must include employer's liability with a limit of \$100,000.00 each accident; \$100,000 bodily injury or disease for each employee and \$500,000.00 bodily injury or disease policy limit.

b) Comprehensive General Liability: Shall have minimum limits of \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include premises and/or operations, products and/or completed operations, broad form property damage, and a contractual liability endorsement.

c) Business Auto Policy: Shall have minimum limits of \$1,000,000.00 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include: owned vehicles, hired and non-owned vehicles, and employee non-ownership.

d) Professional Errors and Omissions Liability: Coverage shall have minimum limits of \$1,000,000.00 per claim and \$2,000,000.00 aggregate.

e) Umbrella Liability: Coverage shall have a minimum limit of \$1,000,000.00 with underlying coverages of compensation/employer's liability.

(ii) Additional special requirements shall be as follows:

a) The Fire Department shall include the Town as an additional insured on each of the liability policies required to be maintained by this Contract.

b) The Fire Department shall maintain current, valid insurance policies meeting the requirements stated above during the entire duration of this Contract. The Fire Department shall insure that for any policy of insurance held by the Fire Department pursuant to this Contract that the Town receives any certificates for new insurance policies within thirty (30) days of the effective date of the policy and that the Town receives renewal certificates more than thirty (30) days prior to any expiration date on every policy. The Fire Department shall ensure that the Town is provided thirty (30) days' notice of any event of a cancellation or modification of any policy of insurance held by the Fire Department pursuant to this Contract. The Fire Department shall insure that certificates of insurance meeting the required insurance provisions shall be forwarded to the Town. The Fire Department shall insure that

the insurance certificates contain no language stating or implying that no liability shall be imposed upon the insurance company for failure to provide the Fire Department and the Town with the notice required by this Contract.

- (b) FSRE agrees to maintain reasonable liability insurance coverage, as protection from judgments of any kind, including but not limited to insurance coverage for claims of premises liability and general liability insurance. FSRE agrees to include the Fire Department and the Town as a named insured on any policies of insurance maintained pursuant to this Contract. In the event the Fire Department maintains sufficient insurance coverage to satisfy this provision, FSRE need not purchase additional insurance unless it feels such purchase is reasonably necessary.
- (c) FSRE and/or the Fire Department shall maintain adequate and reasonable Property Insurance upon the Real Property and the Personal Property Assets (as defined in this Contract), including all buildings, building improvements and personal property, in an amount equal to full insurable replacement cost. FSRE and/or the Fire Department, as the case may be, agrees to include the Town as a named insured on any policies of property insurance maintained pursuant to this Contract
- (d) Upon request from the Town and in each instance, FSRE and the Fire Department shall provide the Town with copies of any or all insurance policies and declaration pages associated therewith that are required to be carried under this Section 14.

(15) **EVENTS OF TERMINATION-** Except as otherwise provided herein, one or more of the following shall constitute Events of Termination under this Contract:

- (a) The dissolution, insolvency, receivership, involuntary bankruptcy or voluntary bankruptcy of the Fire Department or FSRE.
- (b) The failure of the Fire Department to maintain a continuous certification by the DOI and its OSFM, or any successive governmental agencies responsible for fire department certification in the State of North Carolina, of a public protection classification rating of not less than Public Protection Class 7 as that term is currently interpreted and defined under Section .0900 of Subchapter 05A, Chapter 05 of Title 11 of the North Carolina Administrative Code (NCAC).
- (c) The failure of the Fire Department to at all times maintain effective Mutual Aid Agreements with each of the fire departments serving jurisdictions contiguous to the Town of Southern Shores. This event of termination shall not apply if the cancellation of the mutual aid contract/agreement is due to circumstances that are beyond the control of the Fire Department (for example, when the actions of a town's governing body cancels, terminates, suspends or otherwise renders a mutual aid agreement ineffective).

- (d) The Town's receipt of written notice from the Fire Department that the Fire Department is unable to provide fire protection services for the Town due to an immediate lack of available volunteer firefighters.
- (e) A decision by the Town to establish a municipal fire department or to use another entity to provide fire services.
- (f) Inclusion of the Town in a Fire Protection District in which Fire Protection Services for the Town and its citizens will be provided by Dare County through any means allowed by law for Dare County to provide such services.

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 15.

(16) EFFECT OF AN EVENT OF TERMINATION- Upon the occurrence of an Event of Termination:

- (a) The Town shall have the right to take immediate possession of the Real Property and the Personal Property Assets if in the Town's judgment such action is necessary to continue to maintain adequate Fire Protection Services to the Town without interruption.
- (b) The Town shall provide the Fire Department and FSRE with notice of the occurrence of an Event of Termination. If such Event of Termination is not cured or remedied by the Fire Department and FSRE within thirty (30) days after the Fire Department and FSRE receive such written notice from the Town, the Town shall have the right to terminate this Contract. A termination of this Contract under this Section 16 shall cause the rights and obligations of the Parties to this Contract to terminate and cease, except to the extent provided in Sections 9, 10 and 17 herein, or as expressly provided otherwise in this Contract.

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 16.

(17) REQUIRED CONVEYANCE OF ALL PROPERTY UPON TERMINATION-

- (a) Notwithstanding any provision to the contrary in this Contract, if this Contract is terminated under Section 16 of this Contract for any of the reasons set forth in Section 15 of this Contract, the Fire Department and/or FSRE shall, upon receipt of written notice from the Town, immediately and unconditionally convey and deliver to the Town (i) a general warranty deed describing all of the Real Property (the "Deed"), and (ii) a bill of sale (the "Bill of Sale") describing all of the personal property, including fixed assets and intangibles (the "Personal Property Assets") owned by the Fire Department and FSRE. Upon the Town's receipt and acceptance of the Deed and the Bill of Sale, the Town shall agree to accept and assume, and to

hold the Fire Department and/or FSRE harmless from, any indebtedness previously incurred by the Fire Department and/or FSRE that is secured by the Real Property and/or the Personal Property Assets as collateral for such indebtedness.

- (b) Upon the occurrence of an Event of Termination and subsequent conveyance by the Fire Department and FSRE to the Town of the Real Property and the Personal Property Assets, and notwithstanding the provisions of Section 20(a) of this Contract, the Town will agree to indemnify and hold the directors, officers, and volunteers of the Fire Department and FSRE harmless for any cost or expense incurred by the Town in connection with such Event of Termination, except for actual malfeasance or criminality on the part of those indemnified by this subparagraph (b).

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 17.

- (18) **RIGHTS TO ASSETS AND FINANCIAL RESPONSIBILITY-** Other than as specifically set forth in this Contract, the Town has no claim or other rights related to the property and assets of the Fire Department. Except as specifically set forth in this Contract, the Town shall have no financial responsibility for or control over the debts, encumbrances or liabilities of the Fire Department. In the future the Town, in its sole discretion, may agree to co-sign or guarantee a future loan, lease, bond or financial instrument on behalf of the Fire Department and under such terms as agreed to by the Parties.

(19) **RELATION TO PRIOR CONTRACTS; FINANCING PROVISIONS-**

- (a) Effective as of the Effective Date, the Contract replaces and supersedes all previous contracts entered into between the Parties, including but not limited to the 2009 Fire Department Contract and the 2009 FSRE Contract; provided, however, that effective as of the Contract Date, Sections 13 and 14 of the 2009 Fire Department Contract and Sections 1, 3 and 5 of the 2009 FSRE Contract, shall be and are hereby replaced and superseded in their entirety by the Contract.

- (b) The 2009 Memorandum of Agreement dated February 26, 2009 and recorded in Book 1793, Page 146, Dare County Registry is hereby terminated in its entirety effective as of the Contract Date.

- (c) Sections 9, 10, 15, 16, 17 and 19 of the Contract shall become effective in their entirety as of the Contract Date. All other terms and provisions of the Contract shall be effective as of the Effective Date.

- (d) The 2018 Memorandum of Contract dated November 7, 2018 and recorded in Book 2273, Page 371, Dare County Registry shall be and is hereby superseded and replaced by the Memorandum of Amended and Restated Contract of even date herewith, attached as **Exhibit A**.

(e) All notices required by the Contract to be sent by any one or more of the Parties (the "Party Giving Notice") to one or more of the other Parties shall also be sent by the Party Giving Notice to all (1) third party tenants, other than any of the Parties, under a lease (or under a sublease or assignment of such lease) of any of the Real Property or Personal Property Assets now or hereinafter located on the Real Property (each "Tenant"), and (2) lenders holding a mortgage, equipment lease, ground lease, or other form of financing instrument encumbering any of the Real Property or Personal Property Assets now or hereinafter located on the Real Property (each "Lender"). The Fire Department and FSRE shall promptly provide the Town with the name and mailing address of all Lenders and Tenants and any subsequent changes to their mailing addresses.

(f) All notices required by the Contract to be sent by any Lender or any Tenant to one or more of the Parties shall also be sent by such Lender or such Tenant to all of the other Parties to the Contract, including but not limited to the Town.

(g) The Town shall have the right and option (but not the duty or obligation except as may be expressly provided otherwise in the Contract) to cure any default by the Fire Department and/or FSRE in any third party financing of the Real Property, improvements, equipment, assets or other real or personal property located on, used by or associated with the Real Property and Personal Property Assets, or the Fire Protection Services, and/or to exercise the a right of redemption under such financing in the event of default, and/or assume the indebtedness of any such financing in the event of default. In the case of such cure, redemption or assumption by the Town, the Fire Department and FSRE shall be required to deed, transfer and convey the Real Property and the Personal Property Assets to the Town in the same manner set forth in Section 17(a) of the Contract.

(h) In the event the Fire Department and FSRE finance improvements to the Real Property (including but not limited to the construction of a new fire station) as equipment under an equipment lease and/or sublease, the Parties agree and understand that such improvements shall be included as part of any transfer and conveyance to the Town under Sections 17(a) and 19(g) of the Contract, notwithstanding how such improvements are characterized in the financing documents.

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 19.

(20) INDEMNIFICATION-

(a) Except as provided in Section 17 of this Contract, the Fire Department and FSRE jointly and severally agree to indemnify and hold the Town harmless from and against any and all claims, demands, actions, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and litigation expenses) that the Town may incur that are directly or indirectly attributable, in whole or in part, to a breach of this Agreement by the Fire Department or FSRE, or any other acts or omissions by the Fire Department or FSRE.

- (b) The Town agrees to indemnify and hold the Fire Department and FSRE harmless from and against any and all claims, demands, actions, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and litigation expenses) that the Fire Department and FSRE may incur that are directly or indirectly attributable, in whole or in part, to a breach of this Agreement by the Town, or any other acts or omissions by the Town.
- (21) **SEVERABILITY-** Every provision of this Contract intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract.
- (22) **SUIT COSTS-** In the event any Party shall institute an action to enforce the provisions of this Contract, the Party or Parties prevailing in such action, whether by adjudication, arbitration, or settlement, shall be entitled to recover suit costs, including reasonable attorney's fees, from the other Party or Parties.
- (23) **APPLICABLE LAW-** This Contract shall be construed and interpreted under the laws of the State of North Carolina.
- (24) **PARTIES-** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. As used herein, words in singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.
- (25) **NOTICES-** Notices hereunder shall be effective and deemed given when deposited in the United States Mails, postage prepaid, certified mail with return receipt requested. Alternatively, the party may use a nationally recognized overnight delivery service. Notices shall be addressed, in the case of the Town to:

Town of Southern Shores
 Attention Town Manager
 5375 N. Virginia Dare Trail
 Southern Shores, NC 27949

With a required copy to:

Benjamin M. Gallop
 Town Attorney
 Hornthal, Riley, Ellis & Maland, L.L.P.
 2502 S. Croatan Highway
 Nags Head, North Carolina 27959

In the case of the Fire Department:

Southern Shores Volunteer Fire Department, Inc.
 15 South Dogwood Trail

Southern Shores, NC 27949

In the case of FSRE:

Fire Service Real Estate, Inc.
15 South Dogwood Trail
Southern Shores, NC 27949

Any Party may change the address to which such notices are to be addressed by giving each other party notice in the manner herein set forth.

- (26) **NON-WAIVER**- The waiver by either party hereto of a breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision of this Contract.
- (27) **COUNTERPARTS**- This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.
- (28) **HEADINGS**- The headings, subheadings and captions in this Contract and in any exhibit hereto are for reference purposes only and shall not affect the meaning or interpretation of this Contract.
- (29) **ENTIRE AGREEMENT**- This Contract contains the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all negotiations, prior discussions, agreements, arrangements and understandings, written or oral, relating to the subject matter hereof.
- (30) **AMENDMENTS**- This Contract may not be amended except by written instrument duly executed by or on behalf of all of the parties hereto.

[signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have executed this Contract, and have been duly authorized to do so.

SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.:

By: _____

Chairman, Board of Directors

ATTEST: _____

Secretary

(corporate seal)

TOWN OF SOUTHERN SHORES:

By: _____

Mayor

ATTEST: _____

Town Clerk



FIRE SERVICE REAL ESTATE, INC.:

By: _____

Name: _____

Title: _____

ATTEST: _____

Secretary

(corporate seal)

Pre-Audit Certification:

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

Bonnie Swain

Finance Officer, Town of Southern Shores

EXHIBIT A
APPROVED FORM OF MEMORANDUM OF CONTRACT
(See attached)

Prepared by and return to:
 Robert B. Hobbs, Jr., Attorney
 Hornthal, Riley, Ellis & Maland, LLP
 2502 S. Croatan Highway
 Nags Head, North Carolina 27959

Excise Tax: \$-0-
 Transfer Tax: \$-0-

Tax Parcel: 022110000 and 022519012
 LT # _____

MEMORANDUM OF CONTRACT

NORTH CAROLINA, DARE COUNTY

THIS MEMORANDUM OF AMENDED AND RESTATED CONTRACT (the "Memorandum of Amended and Restated Contract"), dated February 26, 2019, (the "Contract Date"), by and between TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation, whose mailing address is Attention Town Manager, 5375 N. Virginia Dare Trail, Southern Shores, NC 27949 (the "Town"); SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC., a North Carolina nonprofit corporation, whose mailing address is Southern Shores Volunteer Fire Department, Inc., 15 South Dogwood Trail, Southern Shores, NC 27949 (the "Fire Department"); and FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation, whose mailing address is Fire Service Real Estate, Inc., 15 South Dogwood Trail, Southern Shores, NC 27949 ("FSRE") (the Town, the Fire Department and FSRE collectively the "Parties").

WHEREAS, FSRE owns certain real property located in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina and being more particularly described in that certain Deed of Gift recorded January 30, 2009 in Book 1790, Page 153 of the Dare County Registry, with property addresses of 15 South Dogwood Trail, Southern Shores, NC 27949 (the "Active Fire Station") and 28 East Dogwood Trail, Southern Shores, NC 27949 (the "Inactive Fire Station") (the property described in Deed recorded in Book 1790, Page 153 of the Dare County Registry, and also referred to herein as the Active Fire Station and the Inactive Fire Station, may be collectively referred to as the "Real Property"); and

WHEREAS, currently the Fire Department provides the Town services to prevent, limit, and reduce damage or personal injury caused by fire or other emergency under a contract dated February 1, 2009 and scheduled to expire on June 30, 2019 (the "2009 Fire Department Contract"); and

WHEREAS, the Town and FSRE are parties to a contract entitled, "Contract Between the Town of Southern Shores and Fire Service Real Estate, Inc." dated February 1, 2009 (the "2009 FSRE Contract"); and

WHEREAS, certain provisions of the 2009 FSRE Contract are contained in that certain Memorandum of Agreement dated February 26, 2009 and recorded in Book 1793, Page 146, Dare County Registry (the "2009 Memorandum of Agreement"); and

WHEREAS, the Parties entered into a new continuing contract, dated November 7, 2018 (the "Original Contract Date"), effective July 1, 2019 (the "Effective Date"), for the purpose of the Fire Department continuing to provide services for the Town to prevent, limit, and reduce damage or personal injury caused by fire or other emergency; and

WHEREAS, the Parties entered into and recorded a Memorandum of Contract dated November 7, 2018 and recorded in Book 2273, Page 371, Dare County Registry (the "2018 Memorandum of Contract"); and

WHEREAS, the Parties now desire to make certain changes to the Contract; and

WHEREAS, the term "Contract Date" as used herein shall mean the date of this Amended and Restated Contract and not the Original Contract Date.

NOW, THEREFORE, this Memorandum of Amended and Restated Contract shall serve as record notice that the following agreements apply to the Real Property and the Personal Property Assets, and shall replace in its entirety the 2018 Memorandum of Contract:

1. Section 9 of the Contract provides as follows:

(9) **PERMISSION TO USE FACILITIES-** Each of the Parties acknowledges a mutual desire to cooperate with the other Parties in ensuring day-to-day operations are conducted in the best interest of the citizens of the Town. As further consideration for this Contract, each party agrees the use of certain properties by the other party for day to day operations shall be permitted as follows:

(a) In the event the Town Council approves a final construction bid amount for financing the construction costs of a new fire station, the Town agrees to grant to FSRE, as an appurtenance to FSRE's property located at 15 South Dogwood Trail, Southern Shores, NC, a permanent, perpetual and non-exclusive easement over, under and across a portion of the Town's property located at 27 Pintail Trail, Southern Shores, NC, for the sole and limited purpose of "maintaining an open area for vehicle parking, vehicle turning, and outdoor training, with no permanent structures to be constructed, erected or otherwise maintained within the Easement Area." At the time such easement is granted by the Town, the Easement Area shall be described on a survey prepared by a licensed North Carolina surveyor, a copy of which shall be attached to the Deed of Easement. The Town shall not bear any expense associated with the preparation of such survey. The survey shall depict an Easement Area of approximately 200 linear ft. by 58 linear ft. portion of the Town's

property located at 27 Pintail Trail, and shall share a common boundary with, and is situated directly adjacent to, the Fire Department's current fire station at 15 South Dogwood Trail, Southern Shores, NC. The Deed of Easement shall be recorded by FSRE or the Fire Department in the Dare County Registry at the expense of FSRE or the Fire Department. FSRE and the Fire Department shall be solely responsible for its use of such easement and, to the extent permitted by applicable law, shall, to the extent covered by applicable insurance, indemnify, defend, and hold the Town harmless for any loss or costs and in any actions whatsoever due to the Fire Department's and/or FSRE's use as described herein.

- (b) In the event FSRE and/or the Fire Department constructs a new fire station at 15 South Dogwood Trail, Southern Shores, NC, FSRE shall grant to Town a non-exclusive, permanent and perpetual easement over and across FSRE's Property and appurtenant to the Town's property located at 27 Pintail Trail, Southern Shores, NC, for the sole and limited purposes of "(i) parking Town employees' vehicles in the Easement Area, and (ii) ingress, egress, and access by pedestrians and vehicles between Pintail Trail and the Town's property located at 27 Pintail Trail, Southern Shores, NC;" said access being located where such access is currently located and being similar and in proximity to that easement granted reserved and granted to the Town in the Memorandum of Agreement recorded March 3, 2009 in Deed Book 1793, Page 146, Dare County Registry. The Deed of Easement contemplated by this Section 9(b) shall be in a form reasonably satisfactory to the Town and shall be recorded in the Dare County Registry by the Town at the Town's expense. A survey depicting the easement area for this Deed of Easement shall be prepared by a surveyor licensed in North Carolina and procured by FSRE and/or the Fire Department at the sole expense of FSRE and/or the Fire Department.
- (c) The Town utilizes the Town's public works property located at 27 Pintail Trail, Southern Shores, NC in part for the Town's storage of inert material. In the event the easement described in Section 9(a) above is granted by the Town, the Town will no longer be able to use the Town's public works property located at 27 Pintail Trail, Southern Shores, NC for the Town's storage of inert material. As part of the consideration for the easement which the Town has agreed to grant under Section 9(a) of this Contract, FSRE and the Fire Department will grant to the Town at the same time the Town grants the easement described in Section 9(a) above, an exclusive, perpetual, permanent and non-revocable use and license coupled with an interest, for the Town's exclusive use of (i) a certain enclosed portion (largest-sized bay) of the building known as the inactive East Dogwood Trail Fire Station located on property owned by FSRE at 28 East Dogwood Trail, Southern Shores, NC (the "Inactive Station"), for Town storage purposes, and (ii) an open paved area of approximately 50 feet by 75 feet in size located in the Inactive Station's rear parking area for non-intrusive storage of inert earthen material by the Town. The Town shall be solely responsible for its storage and use and, to the extent permitted by applicable law, shall indemnify, defend, and hold the Fire Department and FSRE harmless for any loss or costs and in any actions whatsoever due to the Town's use as described in this subsection (c).

2. Section 10 of the Contract provides as follows:

(10) ADDITIONAL PROPERTY RIGHTS, OBLIGATIONS AND COVENANTS-

- (a) **Right of First Negotiation-** During the term of this Contract, in the event the Fire Department or FSRE contemplates or considers the sale of any real property owned by FSRE or the Fire Department, the Town shall have the right to be the first party to enter negotiations and to make an offer to purchase such real property.
- (b) **Right of First Refusal-** In the event of unsuccessful negotiations and/or in the event FSRE or the Fire Department receive a bona fide offer from a third party which is acceptable to FSRE and/or the Fire Department for the purchase of any or all of the Real Property, shall give written notice by certified mail, return receipt requested, to the Town of the existence and terms and conditions of such offer, furnishing the Town with a correct and true copy of such offer, and the Town shall have sixty (60) days thereafter to notify FSRE and the Fire Department that the Town agrees to purchase the same property on the same terms and conditions as are contained in such offer. If the Town declines to make such offer, or fails to reply to FSRE's or the Fire Department's written notice of such offer, within such sixty (60) day period, FSRE or the Fire Department may accept such offer from the third party. This right of first refusal shall continue to be in effect until (1) the conveyance of such property pursuant to the terms of this Right of First Refusal, or (2) thirty (30) years after the Effective Date, whichever occurs first. Any written notice by FSRE or the Fire Department to the Town of the right of first refusal shall not relieve FSRE or the Fire Department of their obligation under this Right of First Refusal to give further notices of right of first refusal upon any future offers by third parties for any of the Real Property.
- (c) **Covenant to Not Demolish Property or Diminish in Value or Transfer-** Neither the Fire Department nor FSRE shall demolish, raze, or cause diminishment of value of, or to, any improved real property owned by FSRE or the Fire Department during the term of this Contract. Neither the Fire Department nor FSRE shall mortgage or encumber the any of the Real Property without the Town's prior written consent in each instance.
- (d) **Use Covenant-** The Real Property shall only be used for Fire Protection Services and the other purposes and easements expressly described in this Contract, and for no other purpose, without the prior written consent of the Town in each instance.
- (e) **Net Proceeds from any Property Sales-** Any net proceeds realized by the Fire Department or FSRE from the sale of any of the Real Property shall first be applied towards the principal balance owed by FSRE and/or the Fire Department on any remaining outstanding loan made to FSRE and/or the Fire Department for the construction of a new fire station at 15 South Dogwood Trail, Southern Shores, NC, and next towards any succeeding outstanding loan balances, whether secured or unsecured, in order of greatest amounts owed. Any proceeds remaining after said loans have been paid off shall be transferred to the Fire Department (if not already

in the Fire Department's possession) and shall then be fully applied by the Fire Department to offset the Base Compensation to be paid by the Town in the next fiscal year.

- (f) **Notice to Town-** FSRE shall provide both the Fire Department and the Town with at least (20) days written notice of its intentions prior to encumbering, pledging or otherwise disposing of any portion of the Real Property in any manner other than a lease to the Fire Department or the Town for the purposes of providing fire services. Said notice shall include any information pertinent to the action FSRE intends to take, including but not limited to the parties, the consideration and the description of any parcel subject to the action intended by FSRE. FSRE shall provide any parties involved with the intended action full disclosure of this Contract, including its exhibits.
- (g) **Required Lease.** FSRE shall enter into a lease of the Real Property with the Fire Department. Upon termination of any lease existing at any time between FSRE and the Fire Department, the Town shall have the right of first refusal to enter into a new lease of the Real Estate with FSRE as against all other parties except the Fire Department.

3. Section 15 of the Contract provides as follows:

(15) **EVENTS OF TERMINATION**- Except as otherwise provided herein, one or more of the following shall constitute Events of Termination under this Contract:

- (a) The dissolution, insolvency, receivership, involuntary bankruptcy or voluntary bankruptcy of the Fire Department or FSRE.
- (b) The failure of the Fire Department to maintain a continuous certification by the DOI and its OSFM, or any successive governmental agencies responsible for fire department certification in the State of North Carolina, of a public protection classification rating of not less than Public Protection Class 7 as that term is currently interpreted and defined under Section .0900 of Subchapter 05A, Chapter 05 of Title 11 of the North Carolina Administrative Code (NCAC).
- (c) The failure of the Fire Department to at all times maintain effective Mutual Aid Agreements with each of the fire departments serving jurisdictions contiguous to the Town of Southern Shores. This event of termination shall not apply if the cancellation of the mutual aid contract/agreement is due to circumstances that are beyond the control of the Fire Department (for example, when the actions of a town's governing body cancels, terminates, suspends or otherwise renders a mutual aid agreement ineffective).
- (d) The Town's receipt of written notice from the Fire Department that the Fire Department is unable to provide fire protection services for the Town due to an immediate lack of available volunteer firefighters,

- (e) A decision by the Town to establish a municipal fire department or to use another entity to provide fire services.
- (f) Inclusion of the Town in a Fire Protection District in which Fire Protection Services for the Town and its citizens will be provided by Dare County through any means allowed by law for Dare County to provide such services.

4. Section 16 of the Contract provides as follows:

(16) **EFFECT OF AN EVENT OF TERMINATION-** Upon the occurrence of an Event of Termination:

- (a) The Town shall have the right to take immediate possession of the Real Property and the Personal Property Assets if in the Town's judgment such action is necessary to continue to maintain adequate Fire Protection Services to the Town without interruption.
- (b) The Town shall provide the Fire Department and FSRE with notice of the occurrence of an Event of Termination. If such Event of Termination is not cured or remedied by the Fire Department and FSRE within thirty (30) days after the Fire Department and FSRE receive such written notice from the Town, the Town shall have the right to terminate this Contract. A termination of this Contract under this Section 16 shall cause the rights and obligations of the Parties to this Contract to terminate and cease, except to the extent provided in Sections 9, 10 and 17 herein, or as expressly provided otherwise in this Contract.

5. Section 17 of the Contract provides as follows:

(17) **REQUIRED CONVEYANCE OF ALL PROPERTY UPON TERMINATION-**

- (a) Notwithstanding any provision to the contrary in this Contract, if this Contract is terminated under Section 16 of this Contract for any of the reasons set forth in Section 15 of this Contract, the Fire Department and/or FSRE shall, upon receipt of written notice from the Town, immediately and unconditionally convey and deliver to the Town (i) a general warranty deed describing all of the Real Property (the "Deed"), and (ii) a bill of sale (the "Bill of Sale") describing all of the personal property, including fixed assets and intangibles (the "Personal Property Assets") owned by the Fire Department and FSRE. Upon the Town's receipt and acceptance of the Deed and the Bill of Sale, the Town shall agree to accept and assume, and to hold the Fire Department and/or FSRE harmless from, any indebtedness previously incurred by the Fire Department and/or FSRE that is secured by the Real Property and/or the Personal Property Assets as collateral for such indebtedness.
- (b) Upon the occurrence of an Event of Termination and subsequent conveyance by the Fire Department and FSRE to the Town of the Real Property and the Personal Property Assets, and notwithstanding the provisions of Section 20(a) of this Contract, the Town will agree to indemnify and hold the directors, officers, and volunteers of the Fire Department and FSRE harmless for any cost or expense

incurred by the Town in connection with such Event of Termination, except for actual malfeasance or criminality on the part of those indemnified by this subparagraph (b).

6. Section 19 of the Contract provides as follows:

(19) **RELATION TO PRIOR CONTRACTS; FINANCING PROVISIONS-**

(a) Effective as of the Effective Date, the Contract replaces and supersedes all previous contracts entered into between the Parties, including but not limited to the 2009 Fire Department Contract and the 2009 FSRE Contract; provided, however, that effective as of the Contract Date, Sections 13 and 14 of the 2009 Fire Department Contract and Sections 1, 3 and 5 of the 2009 FSRE Contract, shall be and are hereby replaced and superseded in their entirety by the Contract.

(b) The 2009 Memorandum of Agreement dated February 26, 2009 and recorded in Book 1793, Page 146, Dare County Registry is hereby terminated in its entirety effective as of the Contract Date.

(c) Sections 9, 10, 15, 16, 17 and 19 of the Contract shall become effective in their entirety as of the Contract Date. All other terms and provisions of the Contract shall be effective as of the Effective Date.

(d) The 2018 Memorandum of Contract dated November 7, 2018 and recorded in Book 2273, Page 371, Dare County Registry shall be and is hereby superseded and replaced by this Memorandum of Amended and Restated Contract.

(e) All notices required by the Contract to be sent by any one or more of the Parties (the "Party Giving Notice") to one or more of the other Parties shall also be sent by the Party Giving Notice to all (1) third party tenants, other than any of the Parties, under a lease (or under a sublease or assignment of such lease) of any of the Real Property or Personal Property Assets now or hereinafter located on the Real Property (each "Tenant"), and (2) lenders holding a mortgage, equipment lease, ground lease, or other form of financing instrument encumbering any of the Real Property or Personal Property Assets now or hereinafter located on the Real Property (each "Lender"). The Fire Department and FSRE shall promptly provide the Town with the name and mailing address of all Lenders and Tenants and any subsequent changes to their mailing addresses.

(f) All notices required by the Contract to be sent by any Lender or any Tenant to one or more of the Parties shall also be sent by such Lender or such Tenant to all of the other Parties to the Contract, including but not limited to the Town.

(g) The Town shall have the right and option (but not the duty or obligation except as may be expressly provided otherwise in the Contract) to cure any default by the Fire Department and/or FSRE in any third party financing of the Real Property, improvements,

equipment, assets or other real or personal property located on, used by or associated with the Real Property and Personal Property Assets, or the Fire Protection Services, and/or to exercise the a right of redemption under such financing in the event of default, and/or assume the indebtedness of any such financing in the event of default. In the case of such cure, redemption or assumption by the Town, the Fire Department and FSRE shall be required to deed, transfer and convey the Real Property and the Personal Property Assets to the Town in the same manner set forth in Section 17(a) of the Contract.

(h) In the event the Fire Department and FSRE finance improvements to the Real Property (including but not limited to the construction of a new fire station) as equipment under an equipment lease and/or sublease, the Parties agree and understand that such improvements shall be included as part of any transfer and conveyance to the Town under Sections 17(a) and 19(g) of the Contract, notwithstanding how such improvements are characterized in the financing documents.

7. Other Provisions. The other provisions set forth in the Contract are hereby incorporated by reference in this Memorandum.

(continued on the following page)

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered as of the day and year first above written.

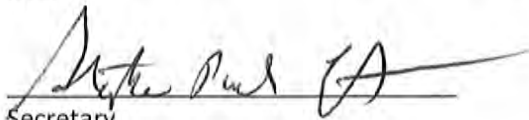
FSRE:

FIRE SERVICE REAL ESTATE, INC.

BY: 

Chairman of the Board

ATTEST:


Secretary

NORTH CAROLINA, DARE COUNTY

I, Elizabeth A. Haslam, a Notary Public of the County of DARE, and State aforesaid, certify that Steve Gremet personally came before me this day and acknowledged that (s)he is Secretary of FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its Chairman of the Board, and attested by (him) (her) as its Secretary.

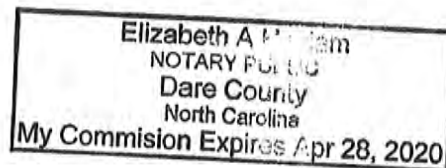
Witness my hand and official stamp or seal, this 26th day of February, 2019.


Notary Public

Notary's printed or typed name: Elizabeth A. Haslam

My commission expires: April 28, 2020

(AFFIX NOTARY SEAL)



FIRE DEPARTMENT:

SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.

BY: 

Chairman of the Board

ATTEST:


Secretary

NORTH CAROLINA, DARE COUNTY

I, Elizabeth A. Haslam, a Notary Public of the County of Dare,
and State aforesaid, certify that Steve Cicimato personally came before me this day and
acknowledged that (s)he is Secretary of SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC., a
North Carolina nonprofit corporation, and that by authority duly given and as the act of the Corporation,
the foregoing instrument was signed in its name by its Chairman of the Board, and attested by (him)
(her) as its Secretary.

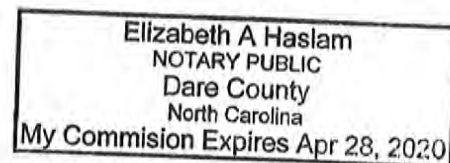
Witness my hand and official stamp or seal, this 26th day of February, 2019.


Notary Public

Notary's printed or typed name: Elizabeth A. Haslam

My commission expires: April 28, 2020

(AFFIX NOTARY SEAL)



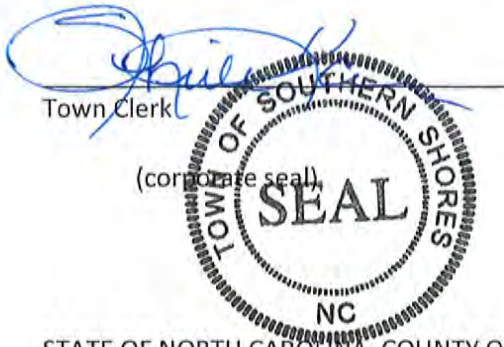
TOWN:

TOWN OF SOUTHERN SHORES

BY: Thomas G. Bennett

Mayor

ATTEST:



STATE OF NORTH CAROLINA, COUNTY OF DARE

I, Cynthia L. Mills, a Notary Public of the County and State aforesaid, certify that Thomas G. Bennett personally came before me this day and acknowledged that he is the Mayor of The Town of Southern Shores, a North Carolina municipal corporation, and that by authority duly given and as the act of the Town, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by Sheila Kane, its Town Clerk.

Witness my hand and official stamp or seal, this 26 day of February, 2019.

Cynthia L. Mills
Notary Public

Notary's printed or typed name: Cynthia L. Mills

My commission expires: 03/01/2020

(AFFIX NOTARY SEAL)



Recorded: 02/28/2019 12:09:15 PM
 BY: CLAUDIA HARRINGTON
 Cheryl L. House, Register of Deeds
 Dare County, NC

Fee Amt: \$26.00

NC Excise Tax: \$0.00

BOOK 2286 PAGE 427 (11)

700061976



Prepared by and return to:
 Robert B. Hobbs, Jr., Attorney
 Hornthal, Riley, Ellis & Maland, LLP
 2502 S. Croatan Highway
 Nags Head, North Carolina 27959

Excise Tax: \$-0-
 Transfer Tax: \$-0-

Tax Parcel: 022110000 and 022519012
 LT # _____

MEMORANDUM OF CONTRACT

NORTH CAROLINA, DARE COUNTY

THIS MEMORANDUM OF AMENDED AND RESTATED CONTRACT (the "Memorandum of Amended and Restated Contract"), dated February 26, 2019, (the "Contract Date"), by and between TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation, whose mailing address is Attention Town Manager, 5375 N. Virginia Dare Trail, Southern Shores, NC 27949 (the "Town"); SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC., a North Carolina nonprofit corporation, whose mailing address is Southern Shores Volunteer Fire Department, Inc., 15 South Dogwood Trail, Southern Shores, NC 27949 (the "Fire Department"); and FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation, whose mailing address is Fire Service Real Estate, Inc., 15 South Dogwood Trail, Southern Shores, NC 27949 ("FSRE") (the Town, the Fire Department and FSRE collectively the "Parties").

WHEREAS, FSRE owns certain real property located in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina and being more particularly described in that certain Deed of Gift recorded January 30, 2009 in Book 1790, Page 153 of the Dare County Registry, with property addresses of 15 South Dogwood Trail, Southern Shores, NC 27949 (the "Active Fire Station") and 28 East Dogwood Trail, Southern Shores, NC 27949 (the "Inactive Fire Station") (the property described in Deed recorded in Book 1790, Page 153 of the Dare County Registry, and also referred to herein as the Active Fire Station and the Inactive Fire Station, may be collectively referred to as the "Real Property"); and

WHEREAS, currently the Fire Department provides the Town services to prevent, limit, and reduce damage or personal injury caused by fire or other emergency under a contract dated February 1, 2009 and scheduled to expire on June 30, 2019 (the "2009 Fire Department Contract"); and

WHEREAS, the Town and FSRE are parties to a contract entitled, "Contract Between the Town of Southern Shores and Fire Service Real Estate, Inc." dated February 1, 2009 (the "2009 FSRE Contract"); and

WHEREAS, certain provisions of the 2009 FSRE Contract are contained in that certain Memorandum of Agreement dated February 26, 2009 and recorded in Book 1793, Page 146, Dare County Registry (the "2009 Memorandum of Agreement"); and

WHEREAS, the Parties entered into a new continuing contract, dated November 7, 2018 (the "Original Contract Date"), effective July 1, 2019 (the "Effective Date"), for the purpose of the Fire Department continuing to provide services for the Town to prevent, limit, and reduce damage or personal injury caused by fire or other emergency; and

WHEREAS, the Parties entered into and recorded a Memorandum of Contract dated November 7, 2018 and recorded in Book 2273, Page 371, Dare County Registry (the "2018 Memorandum of Contract"); and

WHEREAS, the Parties now desire to make certain changes to the Contract; and

WHEREAS, the term "Contract Date" as used herein shall mean the date of this Amended and Restated Contract and not the Original Contract Date.

NOW, THEREFORE, this Memorandum of Amended and Restated Contract shall serve as record notice that the following agreements apply to the Real Property and the Personal Property Assets, and shall replace in its entirety the 2018 Memorandum of Contract:

1. Section 9 of the Contract provides as follows:

(9) **PERMISSION TO USE FACILITIES-** Each of the Parties acknowledges a mutual desire to cooperate with the other Parties in ensuring day-to-day operations are conducted in the best interest of the citizens of the Town. As further consideration for this Contract, each party agrees the use of certain properties by the other party for day to day operations shall be permitted as follows:

(a) In the event the Town Council approves a final construction bid amount for financing the construction costs of a new fire station, the Town agrees to grant to FSRE, as an appurtenance to FSRE's property located at 15 South Dogwood Trail, Southern Shores, NC, a permanent, perpetual and non-exclusive easement over, under and across a portion of the Town's property located at 27 Pintail Trail, Southern Shores, NC, for the sole and limited purpose of "maintaining an open area for vehicle parking, vehicle turning, and outdoor training, with no permanent structures to be constructed, erected or otherwise maintained within the Easement Area." At the time such easement is granted by the Town, the Easement Area shall be described on a survey prepared by a licensed North Carolina surveyor, a copy of which shall be attached to the Deed of Easement. The Town shall not bear any expense associated with the preparation of such survey. The survey shall depict an Easement Area of approximately 200 linear ft. by 58 linear ft. portion of the Town's

property located at 27 Pintail Trail, and shall share a common boundary with, and is situated directly adjacent to, the Fire Department's current fire station at 15 South Dogwood Trail, Southern Shores, NC. The Deed of Easement shall be recorded by FSRE or the Fire Department in the Dare County Registry at the expense of FSRE or the Fire Department. FSRE and the Fire Department shall be solely responsible for its use of such easement and, to the extent permitted by applicable law, shall, to the extent covered by applicable insurance, indemnify, defend, and hold the Town harmless for any loss or costs and in any actions whatsoever due to the Fire Department's and/or FSRE's use as described herein.

- (b) In the event FSRE and/or the Fire Department constructs a new fire station at 15 South Dogwood Trail, Southern Shores, NC, FSRE shall grant to Town a non-exclusive, permanent and perpetual easement over and across FSRE's Property and appurtenant to the Town's property located at 27 Pintail Trail, Southern Shores, NC, for the sole and limited purposes of "(i) parking Town employees' vehicles in the Easement Area, and (ii) ingress, egress, and access by pedestrians and vehicles between Pintail Trail and the Town's property located at 27 Pintail Trail, Southern Shores, NC;" said access being located where such access is currently located and being similar and in proximity to that easement granted reserved and granted to the Town in the Memorandum of Agreement recorded March 3, 2009 in Deed Book 1793, Page 146, Dare County Registry. The Deed of Easement contemplated by this Section 9(b) shall be in a form reasonably satisfactory to the Town and shall be recorded in the Dare County Registry by the Town at the Town's expense. A survey depicting the easement area for this Deed of Easement shall be prepared by a surveyor licensed in North Carolina and procured by FSRE and/or the Fire Department at the sole expense of FSRE and/or the Fire Department.
- (c) The Town utilizes the Town's public works property located at 27 Pintail Trail, Southern Shores, NC in part for the Town's storage of inert material. In the event the easement described in Section 9(a) above is granted by the Town, the Town will no longer be able to use the Town's public works property located at 27 Pintail Trail, Southern Shores, NC for the Town's storage of inert material. As part of the consideration for the easement which the Town has agreed to grant under Section 9(a) of this Contract, FSRE and the Fire Department will grant to the Town at the same time the Town grants the easement described in Section 9(a) above, an exclusive, perpetual, permanent and non-revocable use and license coupled with an interest, for the Town's exclusive use of (i) a certain enclosed portion (largest-sized bay) of the building known as the inactive East Dogwood Trail Fire Station located on property owned by FSRE at 28 East Dogwood Trail, Southern Shores, NC (the "Inactive Station"), for Town storage purposes, and (ii) an open paved area of approximately 50 feet by 75 feet in size located in the Inactive Station's rear parking area for non-intrusive storage of inert earthen material by the Town. The Town shall be solely responsible for its storage and use and, to the extent permitted by applicable law, shall indemnify, defend, and hold the Fire Department and FSRE harmless for any loss or costs and in any actions whatsoever due to the Town's use as described in this subsection (c).

2. Section 10 of the Contract provides as follows:

(10) ADDITIONAL PROPERTY RIGHTS, OBLIGATIONS AND COVENANTS-

- (a) **Right of First Negotiation-** During the term of this Contract, in the event the Fire Department or FSRE contemplates or considers the sale of any real property owned by FSRE or the Fire Department, the Town shall have the right to be the first party to enter negotiations and to make an offer to purchase such real property.
- (b) **Right of First Refusal-** In the event of unsuccessful negotiations and/or in the event FSRE or the Fire Department receive a bona fide offer from a third party which is acceptable to FSRE and/or the Fire Department for the purchase of any or all of the Real Property, shall give written notice by certified mail, return receipt requested, to the Town of the existence and terms and conditions of such offer, furnishing the Town with a correct and true copy of such offer, and the Town shall have sixty (60) days thereafter to notify FSRE and the Fire Department that the Town agrees to purchase the same property on the same terms and conditions as are contained in such offer. If the Town declines to make such offer, or fails to reply to FSRE's or the Fire Department's written notice of such offer, within such sixty (60) day period, FSRE or the Fire Department may accept such offer from the third party. This right of first refusal shall continue to be in effect until (1) the conveyance of such property pursuant to the terms of this Right of First Refusal, or (2) thirty (30) years after the Effective Date, whichever occurs first. Any written notice by FSRE or the Fire Department to the Town of the right of first refusal shall not relieve FSRE or the Fire Department of their obligation under this Right of First Refusal to give further notices of right of first refusal upon any future offers by third parties for any of the Real Property.
- (c) **Covenant to Not Demolish Property or Diminish in Value or Transfer-** Neither the Fire Department nor FSRE shall demolish, raze, or cause diminishment of value of, or to, any improved real property owned by FSRE or the Fire Department during the term of this Contract. Neither the Fire Department nor FSRE shall mortgage or encumber the any of the Real Property without the Town's prior written consent in each instance.
- (d) **Use Covenant-** The Real Property shall only be used for Fire Protection Services and the other purposes and easements expressly described in this Contract, and for no other purpose, without the prior written consent of the Town in each instance.
- (e) **Net Proceeds from any Property Sales-** Any net proceeds realized by the Fire Department or FSRE from the sale of any of the Real Property shall first be applied towards the principal balance owed by FSRE and/or the Fire Department on any remaining outstanding loan made to FSRE and/or the Fire Department for the construction of a new fire station at 15 South Dogwood Trail, Southern Shores, NC, and next towards any succeeding outstanding loan balances, whether secured or unsecured, in order of greatest amounts owed. Any proceeds remaining after said loans have been paid off shall be transferred to the Fire Department (if not already

in the Fire Department's possession) and shall then be fully applied by the Fire Department to offset the Base Compensation to be paid by the Town in the next fiscal year.

- (f) **Notice to Town-** FSRE shall provide both the Fire Department and the Town with at least (20) days written notice of its intentions prior to encumbering, pledging or otherwise disposing of any portion of the Real Property in any manner other than a lease to the Fire Department or the Town for the purposes of providing fire services. Said notice shall include any information pertinent to the action FSRE intends to take, including but not limited to the parties, the consideration and the description of any parcel subject to the action intended by FSRE. FSRE shall provide any parties involved with the intended action full disclosure of this Contract, including its exhibits.
- (g) **Required Lease.** FSRE shall enter into a lease of the Real Property with the Fire Department. Upon termination of any lease existing at any time between FSRE and the Fire Department, the Town shall have the right of first refusal to enter into a new lease of the Real Estate with FSRE as against all other parties except the Fire Department.

3. Section 15 of the Contract provides as follows:

(15) **EVENTS OF TERMINATION**- Except as otherwise provided herein, one or more of the following shall constitute Events of Termination under this Contract:

- (a) The dissolution, insolvency, receivership, involuntary bankruptcy or voluntary bankruptcy of the Fire Department or FSRE.
- (b) The failure of the Fire Department to maintain a continuous certification by the DOI and its OSFM, or any successive governmental agencies responsible for fire department certification in the State of North Carolina, of a public protection classification rating of not less than Public Protection Class 7 as that term is currently interpreted and defined under Section .0900 of Subchapter 05A, Chapter 05 of Title 11 of the North Carolina Administrative Code (NCAC).
- (c) The failure of the Fire Department to at all times maintain effective Mutual Aid Agreements with each of the fire departments serving jurisdictions contiguous to the Town of Southern Shores. This event of termination shall not apply if the cancellation of the mutual aid contract/agreement is due to circumstances that are beyond the control of the Fire Department (for example, when the actions of a town's governing body cancels, terminates, suspends or otherwise renders a mutual aid agreement ineffective).
- (d) The Town's receipt of written notice from the Fire Department that the Fire Department is unable to provide fire protection services for the Town due to an immediate lack of available volunteer firefighters,

- (e) A decision by the Town to establish a municipal fire department or to use another entity to provide fire services.
- (f) Inclusion of the Town in a Fire Protection District in which Fire Protection Services for the Town and its citizens will be provided by Dare County through any means allowed by law for Dare County to provide such services.

4. Section 16 of the Contract provides as follows:

(16) **EFFECT OF AN EVENT OF TERMINATION-** Upon the occurrence of an Event of Termination:

- (a) The Town shall have the right to take immediate possession of the Real Property and the Personal Property Assets if in the Town's judgment such action is necessary to continue to maintain adequate Fire Protection Services to the Town without interruption.
- (b) The Town shall provide the Fire Department and FSRE with notice of the occurrence of an Event of Termination. If such Event of Termination is not cured or remedied by the Fire Department and FSRE within thirty (30) days after the Fire Department and FSRE receive such written notice from the Town, the Town shall have the right to terminate this Contract. A termination of this Contract under this Section 16 shall cause the rights and obligations of the Parties to this Contract to terminate and cease, except to the extent provided in Sections 9, 10 and 17 herein, or as expressly provided otherwise in this Contract.

5. Section 17 of the Contract provides as follows:

(17) **REQUIRED CONVEYANCE OF ALL PROPERTY UPON TERMINATION-**

- (a) Notwithstanding any provision to the contrary in this Contract, if this Contract is terminated under Section 16 of this Contract for any of the reasons set forth in Section 15 of this Contract, the Fire Department and/or FSRE shall, upon receipt of written notice from the Town, immediately and unconditionally convey and deliver to the Town (i) a general warranty deed describing all of the Real Property (the "Deed"), and (ii) a bill of sale (the "Bill of Sale") describing all of the personal property, including fixed assets and intangibles (the "Personal Property Assets") owned by the Fire Department and FSRE. Upon the Town's receipt and acceptance of the Deed and the Bill of Sale, the Town shall agree to accept and assume, and to hold the Fire Department and/or FSRE harmless from, any indebtedness previously incurred by the Fire Department and/or FSRE that is secured by the Real Property and/or the Personal Property Assets as collateral for such indebtedness.
- (b) Upon the occurrence of an Event of Termination and subsequent conveyance by the Fire Department and FSRE to the Town of the Real Property and the Personal Property Assets, and notwithstanding the provisions of Section 20(a) of this Contract, the Town will agree to indemnify and hold the directors, officers, and volunteers of the Fire Department and FSRE harmless for any cost or expense

incurred by the Town in connection with such Event of Termination, except for actual malfeasance or criminality on the part of those indemnified by this subparagraph (b).

6. Section 19 of the Contract provides as follows:

(19) RELATION TO PRIOR CONTRACTS; FINANCING PROVISIONS-

(a) Effective as of the Effective Date, the Contract replaces and supersedes all previous contracts entered into between the Parties, including but not limited to the 2009 Fire Department Contract and the 2009 FSRE Contract; provided, however, that effective as of the Contract Date, Sections 13 and 14 of the 2009 Fire Department Contract and Sections 1, 3 and 5 of the 2009 FSRE Contract, shall be and are hereby replaced and superseded in their entirety by the Contract.

(b) The 2009 Memorandum of Agreement dated February 26, 2009 and recorded in Book 1793, Page 146, Dare County Registry is hereby terminated in its entirety effective as of the Contract Date.

(c) Sections 9, 10, 15, 16, 17 and 19 of the Contract shall become effective in their entirety as of the Contract Date. All other terms and provisions of the Contract shall be effective as of the Effective Date.

(d) The 2018 Memorandum of Contract dated November 7, 2018 and recorded in Book 2273, Page 371, Dare County Registry shall be and is hereby superseded and replaced by this Memorandum of Amended and Restated Contract.

(e) All notices required by the Contract to be sent by any one or more of the Parties (the "Party Giving Notice") to one or more of the other Parties shall also be sent by the Party Giving Notice to all (1) third party tenants, other than any of the Parties, under a lease (or under a sublease or assignment of such lease) of any of the Real Property or Personal Property Assets now or hereinafter located on the Real Property (each "Tenant"), and (2) lenders holding a mortgage, equipment lease, ground lease, or other form of financing instrument encumbering any of the Real Property or Personal Property Assets now or hereinafter located on the Real Property (each "Lender"). The Fire Department and FSRE shall promptly provide the Town with the name and mailing address of all Lenders and Tenants and any subsequent changes to their mailing addresses.

(f) All notices required by the Contract to be sent by any Lender or any Tenant to one or more of the Parties shall also be sent by such Lender or such Tenant to all of the other Parties to the Contract, including but not limited to the Town.

(g) The Town shall have the right and option (but not the duty or obligation except as may be expressly provided otherwise in the Contract) to cure any default by the Fire Department and/or FSRE in any third party financing of the Real Property, improvements,

equipment, assets or other real or personal property located on, used by or associated with the Real Property and Personal Property Assets, or the Fire Protection Services, and/or to exercise the a right of redemption under such financing in the event of default, and/or assume the indebtedness of any such financing in the event of default. In the case of such cure, redemption or assumption by the Town, the Fire Department and FSRE shall be required to deed, transfer and convey the Real Property and the Personal Property Assets to the Town in the same manner set forth in Section 17(a) of the Contract.

(h) In the event the Fire Department and FSRE finance improvements to the Real Property (including but not limited to the construction of a new fire station) as equipment under an equipment lease and/or sublease, the Parties agree and understand that such improvements shall be included as part of any transfer and conveyance to the Town under Sections 17(a) and 19(g) of the Contract, notwithstanding how such improvements are characterized in the financing documents.

7. Other Provisions. The other provisions set forth in the Contract are hereby incorporated by reference in this Memorandum.

(continued on the following page)

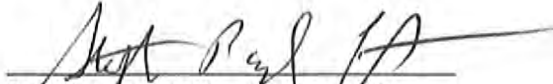
FIRE DEPARTMENT:

SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.

BY: 

Chairman of the Board

ATTEST:


 Secretary Steve Ginato

NORTH CAROLINA, DARE COUNTY

I, Elizabeth A Haslam, a Notary Public of the County of DARE,
 and State aforesaid, certify that Steve Ginato personally came before me this day and
 acknowledged that (s)he is Secretary of SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC., a
 North Carolina nonprofit corporation, and that by authority duly given and as the act of the Corporation,
 the foregoing instrument was signed in its name by its Chairman of the Board, and attested by (him)
 (her) as its Secretary.

 Witness my hand and official stamp or seal, this 26th day of February, 2019.

Elizabeth A Haslam
 Notary Public

 Notary's printed or typed name: Elizabeth A Haslam

 My commission expires: April 28, 2020

(AFFIX NOTARY SEAL)

Elizabeth A Haslam NOTARY PUBLIC Dare County North Carolina My Commission Expires <u>Apr 28, 2020</u>
--



IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered as of the day and year first above written.

FSRE:

FIRE SERVICE REAL ESTATE, INC.

BY: _____

Chairman of the Board

ATTEST:

Notary Public
Secretary

NORTH CAROLINA, DARE COUNTY

I, Elizabeth A Haslam, a Notary Public of the County of DARE, and State aforesaid, certify that Steve Cimoto personally came before me this day and acknowledged that (s)he is Secretary of FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its Chairman of the Board, and attested by (him) (her) as its Secretary.

Witness my hand and official stamp or seal, this 26th day of February, 2019.

Elizabeth A Haslam
Notary Public

Notary's printed or typed name: Elizabeth A. Haslam

My commission expires: April 28, 2020

(AFFIX NOTARY SEAL)

Elizabeth A Haslam
NOTARY PUBLIC
Dare County
North Carolina
My Commission Expires Apr 28, 2020



TOWN:

TOWN OF SOUTHERN SHORES

BY: Thomas G. Bennett

Mayor

ATTEST:

Sheila Kane
Town Clerk

(corporate seal)



STATE OF NORTH CAROLINA COUNTY OF DARE

I, Cynthia L. Mills, a Notary Public of the County and State aforesaid, certify that Thomas G. Bennett personally came before me this day and acknowledged that he is the Mayor of The Town of Southern Shores, a North Carolina municipal corporation, and that by authority duly given and as the act of the Town, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by Sheila Kane, its Town Clerk.

Witness my hand and official stamp or seal, this 26 day of February, 2019.

Cynthia L. Mills
Notary Public

Notary's printed or typed name: Cynthia L. Mills

My commission expires: 03/01/2020

(AFFIX NOTARY SEAL)



NORTH CAROLINA
DARE COUNTY

PROPOSED

**AMENDED AND RESTATED
FIRE SERVICES CONTRACT
BETWEEN THE TOWN OF SOUTHERN SHORES,
SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.,
AND FIRE SERVICE REAL ESTATE, INC.**

THIS AMENDED AND RESTATED CONTRACT AND AGREEMENT (the "2022 Contract" or the "Contract") , dated as of November 1, 2022 (the "Contract Date"), by and between TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation (the "Town"); SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC., a North Carolina nonprofit corporation (the "Fire Department"); and FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation ("FSRE") (the Town, the Fire Department and FSRE collectively the "Parties").

WITNESSETH:

WHEREAS, pursuant to the Charter of the Town and powers granted the Town by North Carolina General Statutes §160A-11 and §160A-17, the Town may enter into a continuing contract for the performance of services; and

WHEREAS, the Fire Department was established and exists under applicable State and local laws for the purpose of limiting, reducing, or preventing damage or personal injury caused by fire or other emergency, with headquarters in the Town's boundaries; and

WHEREAS, currently the Fire Department provides the Town services to prevent, limit, and reduce damage or personal injury caused by fire or other emergency under a contract dated February 1, 2009 and scheduled to expire on June 30, 2019 (the "2009 Fire Department Contract"); and

WHEREAS, the Fire Department has conveyed certain of its former improved properties to FSRE; and

WHEREAS, such conveyed improved properties are described in a Deed of Gift recorded January 30, 2009 in Book 1790, Page 153 of the Dare County Registry, are located at 15 South Dogwood Trail (the "15 South Dogwood Property") and 28 East Dogwood Trail (the "28 East Dogwood Property") (collectively the "Real Property"); and

WHEREAS, the Real Property is provided by FSRE to the Fire Department to assist the Fire Department is fulfilling the services to the Town required under the 2009 Fire Department Contract; and

WHEREAS, the Town and FSRE are parties to a contract entitled, "Contract Between the Town of Southern Shores and Fire Service Real Estate, Inc." dated February 1, 2009 (the "2009 FSRE Contract"); and

WHEREAS, certain provisions of the 2009 FSRE Contract are contained in that certain Memorandum of Agreement dated February 26, 2009 and recorded in Book 1793, Page 146, Dare County Registry (the "2009 Memorandum of Agreement"); and

WHEREAS, the Parties entered into a new continuing contract, dated November 7, 2018, effective July 1, 2019 (the "2018 Contract"), for the purpose of the Fire Department continuing to provide services for the Town to prevent, limit, and reduce damage or personal injury caused by fire or other emergency; and

WHEREAS, the Parties entered into and recorded a Memorandum of Contract dated November 7, 2018 and recorded in Book 2273, Page 371, Dare County Registry (the "2018 Memorandum of Contract"); and

WHEREAS, the Parties entered into an amended and restated continuing contract, dated February 26, 2019, effective July 1, 2019 (the "2019 Contract"), for the purpose of the Fire Department continuing to provide services for the Town to prevent, limit, and reduce damage or personal injury caused by fire or other emergency; and

WHEREAS, the Parties entered into and recorded a Memorandum of Contract dated February 26, 2019 and recorded in Book 2286, Page 427, Dare County Registry (the "2019 Memorandum of Contract"); and

WHEREAS, the Parties now desire to make certain changes to the 2019 Contract; and

WHEREAS, the term "Contract Date" shall mean the date of this 2022 Contract; and

WHEREAS, the term "Effective Date" shall mean the date that the last one of the Parties has signed this Contract; and

WHEREAS, the term "Contract" shall have the same meaning as "2022 Contract."

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties mutually contract and agree as follows:

- (1) **CONTRACT TERM**- The effective term of this Contract shall commence on July 1, 2019, and shall continue for a period of ten (10) years thereafter. In the event a longer term is necessary for the Fire Department to qualify for any long-term financing of approved debt, the Parties mutually agree to cooperatively and in good faith negotiate an amendment to this Contract, upon such terms and conditions as may be reasonably acceptable to the Parties, extending the term. A year within the terms of this Contract shall be the Town's fiscal year running from July 1 of one calendar year through midnight of June 30 of the following calendar year.
- (2) **SERVICES PROVIDED**- The Fire Department agrees to furnish and provide continuing Fire Protection Service to all properties lying within the incorporated limits of Southern Shores, NC, by promptly dispatching, upon call from the Dare County Central Communicationsvoice

call or paging system or upon notification of a fire or emergency by any other means, the Fire Department's firefighting and rescue equipment and adequate certified and qualified personnel to operate the same, and then making diligent efforts to control and extinguish all fires, and control or mitigate emergencies. In providing services under this Contract, the Fire Department shall be considered the "Fire Department" of the Town as described in Article 14 of Chapter §160A of the North Carolina General Statutes ("NCGS"), and the Fire Department's Fire Chief shall be considered the "Fire Chief" of the Town, with all the typical associated and regulatory duties and responsibilities of a Fire Chief of a Fire Department in the State of North Carolina, including but not limited to those broad duties as described in NCGS §160A-292. The term "Fire Protection Services" shall also include but not be limited to necessary clearing of the public streets of the Town following any event which causes the blockage of any street, sufficient to allow the passage of any vehicle or apparatus of the Fire Department. In the event of a declaration of a major disaster, the Fire Department shall, upon the Town's request, further assist Town staff and contractors with clearing Town streets of downed trees to the extent of Fire Department's resources.

- (3) **DOI CERTIFICATION AND IRS STATUS-** The Fire Department shall, at all times, remain certified by the North Carolina Department of Insurance (DOI) and its Office of State Fire Marshall (OSFM), or any successive governmental agencies responsible for fire department certification in the State of North Carolina, with a public protection classification rating of not less than PPC 9S as that term is currently interpreted and defined under Section .0900 of Subchapter 05A, Chapter 05 of Title 11 of the North Carolina Administrative Code (NCAC). The Fire Department shall, at all times, maintain effective Mutual Aid Agreements with each of the fire departments serving jurisdictions contiguous to the Town of Southern Shores. During the term of this Contract, the Fire Department shall maintain its status as a nonprofit corporation and tax-exempt status under Section 501 (c)(3) or 501 (c)(4) of the Internal Revenue Code, and shall properly and timely file annually any required IRS Form 990.
- (4) **PROVISION OF SERVICES-** The Fire Department shall provide Fire Protection Services to the Town in a manner that is consistent with NC General Statutes, the NC Administrative Code, and any applicable adopted Town ordinances and policies, including but not limited to the Town's Emergency Management Plan, as said policies, ordinances and plans may be amended and/or modified by the Town from time to time in the Town's discretion or as may be required by applicable law. The Town understands and acknowledges the Fire Department shall use its own means and methods of performance, which shall not be subject to control, direction, or supervision of the Town. Subject to the provisions of this Contract, all firefighting equipment and personnel necessary and proper for the performance of this Contract shall be provided by the Fire Department at its sole cost and expense, and all persons engaged in fighting fires pursuant to the provisions of the Contract shall be subject to the exclusive control, direction, education, training, and supervision of the Fire Department. The Town shall not have any right or power with respect to the employment, control, direction, education, training, supervision, suspension, or discharge of any person who may engage in firefighting services or activities in the Fire Department's performance of its obligations under this Contract. When considering whether to provide additional funds for the acquisition of real property to be used by the Fire Department in performing its obligations under this Contract, the Town may, in its discretion, elect to

acquire and retain title to such real property and then make the real property available to the Fire Department, through one or more leases, licenses or through other means, for the Fire Department to use to perform its obligations under this Contract.

- (5) **PROHIBITION OF TOWN INTERFERENCE WITH FIRE DEPARTMENT**- Pursuant to the terms of this Contract and by adopted policy as necessary, the Town shall not interfere with personnel of the Fire Department in the discharge of duties in providing any services to the Town under this Contract except as may be required by law.
- (6) **DEBT**- In seeking to incur any debt for acquisition, construction, or repairs for operations, the Fire Department understands that the cost of such debt shall be fully reflected in its annual budget submitted to the Town and as such must be approved by the Town as a budget expense before an appropriation is made by the Town to cover any additional debt service expense approved as a part of the Base Compensation as described in Paragraph (11) (a) below.
- (7) **ANNUAL PRESENTATION OF PROPOSED BUDGET AND AUDIT**- Annually, the Fire Department shall present the Town with (1) a fiscal year-end audit, completed by a qualified North Carolina Certified Public Accountant, determining the financial condition of the Fire Department as well as the financial condition of FSRE, and (2) a proposed budget, duly adopted by the Fire Department's Board of Directors, projecting operations for the upcoming year.
 - (a) The budget shall be in a form and level of detail that is mutually agreed upon and shall include, at a minimum, specific projected revenues and expenses for operations, capital acquisition, and debt service. The budget shall be submitted using the same time schedule required of Town departments but no later than April 1 of each year. The budget shall provide sufficient information for the Town to determine all projected and legally obligated expenses reasonably anticipated by the Fire Department for the upcoming year, showing all projected expenses to be covered by the Base Compensation including any debt service expenses, and to determine all reasonably anticipated streams of revenues. The Fire Department shall provide an official familiar with the submitted budget to appear before the Town Council at the Town Manager's request to discuss the budget in open session of a public meeting of the Town Council.
 - (b) The fiscal year-end financial audit shall be conducted by a reputable Certified Public Accounting firm. The audit shall result in the production of a written audit report detailing the financial status of both the Fire Department and FSRE. The Fire Department shall use its best efforts to assure that a copy of the written audit report will be presented to the Town no later than November 15th of each calendar year.
- (8) **STRATEGIC PLAN**- The Town acknowledges that significant capital projects may be required during the term of this Contract to support the Fire Department, including but not limited to possible construction of a new fire station, possible acquisition of replacement vehicles, fire engines, and apparatus, and possible employment of firefighters. By no later than April 1, 2020, the Fire Department shall develop and present to the Town a long-term, ten-year

Strategic Plan outlining projected dates when the Fire Department believes such construction, acquisition, and replacements and employments should occur and with projected costs. The Strategic Plan shall be updated annually by the Fire Department and presented to the Town by no later than April 1 of each succeeding year. When considering whether to provide additional funds for the acquisition of real property to be used by the Fire Department in performing its obligations under this Contract, the Town may, in its discretion, opt to acquire and retain title to that real property itself and then make the real property available to the Fire Department, through one or more leases or through other means, for the Fire Department to use to perform its obligations under this Contract.

(9) Intentionally omitted.

(10) ADDITIONAL PROPERTY RIGHTS, OBLIGATIONS AND COVENANTS-

(a) Right to Lease the 28 East Dogwood Property to Dare County for EMS Service.

FSRE and/or the Fire Department shall have the right to lease the 28 East Dogwood Property to Dare County (the "County") for use by the County as an Emergency Medical Services ("EMS") facility (the "County EMS Lease"). Any County EMS Lease shall be expressly subject to the terms and provisions of this Contract, as amended from time to time. Notwithstanding anything to the contrary in this Contract or in any lease of the 28 East Dogwood Property, no one in lawful possession of the 28 East Dogwood Property shall use the 28 East Dogwood Property for any purpose other than (i) EMS purposes, or (ii) Fire Protection Services and the other purposes expressly described in this Contract, and for no other purpose, without the prior written consent of the Town in each instance. FSRE and/or the Fire Department shall provide the Town with 20 days' written notice prior to entering into any agreement, assignment, modification, amendment, extension, or termination of any lease or license pertaining to the County EMS Lease; violation of this notice requirement shall constitute a default under the terms of this Contract.

(b) Required Town Approval of Plans- The Town shall have the right to approve all plans for the partial or full construction, reconstruction, modification, expansion or any other changes to improvements on any of the Real Property, including but not limited to construction of the new EMS facility by the County on the 28 East Dogwood Property. Such approval shall not be unreasonably delayed, conditioned or withheld; but the Town's disapproval of plans for improvements designed for uses of any of the Real Property that are not consistent with the approved uses expressly set forth in this Contract shall be deemed to be a reasonable withholding of Town approval.

(c) Right of First Negotiation- During the term of this Contract, in the event the Fire Department or FSRE contemplates or considers the sale of any real property owned by FSRE or the Fire Department, the Town shall have the right to be the first party to enter negotiations and to make an offer to purchase such real property. This provision shall not apply to the County EMS Lease.

(d) **Right of First Refusal-** In the event of unsuccessful negotiations and/or in the event FSRE or the Fire Department receive a bona fide offer from a third party which is acceptable to FSRE and/or the Fire Department for the purchase of any or all of the Real Property, shall give written notice by certified mail, return receipt requested, to the Town of the existence and terms and conditions of such offer, furnishing the Town with a correct and true copy of such offer, and the Town shall have sixty (60) days thereafter to notify FSRE and the Fire Department that the Town agrees to purchase the same property on the same terms and conditions as are contained in such offer. If the Town declines to make such offer, or fails to reply to FSRE's or the Fire Department's written notice of such offer, within such sixty (60) day period, FSRE or the Fire Department may accept such offer from the third party. This right of first refusal shall continue to be in effect until (1) the conveyance of such property pursuant to the terms of this Right of First Refusal, or (2) thirty (30) years after the Effective Date, whichever occurs first. Any written notice by FSRE or the Fire Department to the Town of the right of first refusal shall not relieve FSRE or the Fire Department of their obligation under this Right of First Refusal to give further notices of right of first refusal upon any future offers by third parties for any of the Real Property. This provision shall not apply to the County EMS Lease.

(e) **Covenant to Not Demolish Property or Diminish in Value or Transfer-** Neither the Fire Department nor FSRE shall demolish, raze, or cause diminishment of value of, any of the Real Property. Since the County's plans under the proposed County EMS Lease call for the County, as tenant, to demolish the current fire station located on the 28 East Dogwood Property and construct a new County EMS facility, the covenant described in this subsection (e) shall not apply to the County's planned demolition of the fire station located on the 28 East Dogwood Property as of the date of this 2022 Contract.

(f) **Mortgages and Encumbrances-** Other than the existing mortgage lien presently held by HomeTrust Bank on the 15 South Dogwood Trail Property, neither the Fire Department nor FSRE shall mortgage or encumber the any of the Real Property without the Town's prior written consent in each instance.

(g) **Use Covenant-** Except for the limited modification contained in Section 10(a) of this Contract, the Real Property shall only be used for Fire Protection Services and the other purposes expressly described in this Contract, and for no other purpose, without the prior written consent of the Town in each instance.

(h) **Net Proceeds from any Property Sales-** Any net proceeds realized by the Fire Department or FSRE from the sale of any of the Real Property shall first be applied towards the principal balance owed by FSRE and/or the Fire Department on any remaining outstanding loan made to FSRE and/or the Fire Department for the construction of a new fire station at 15 South Dogwood Trail, Southern Shores, NC, and next towards any succeeding outstanding loan balances, whether secured or unsecured, in order of greatest amounts owed. Any proceeds remaining after said loans have been paid off shall be transferred to the Fire Department (if not already in the Fire Department's possession) and shall then be fully applied by the Fire

Department to offset the Base Compensation to be paid by the Town in the next fiscal year.

- (i) **Notice to Town-** FSRE shall provide both the Fire Department and the Town with at least (20) days written notice of its intentions prior to encumbering, pledging or otherwise disposing of any portion of the Real Property in any manner other than a lease to the Fire Department or the Town for the purposes of providing fire services. Said notice shall include any information pertinent to the action FSRE intends to take, including but not limited to the parties, the consideration and the description of any parcel subject to the action intended by FSRE. FSRE shall provide any parties involved with the intended action full disclosure of this Contract, including its exhibits. Notwithstanding the foregoing, however, the Parties represent that the Town has received sufficient notice of the Fire Department's plan to lease the 28 East Dogwood Property to Dare County for EMS purposes as described in Section 10(a) of this Contract.
- (j) **Required Lease.** FSRE shall enter into a lease of the Real Property with the Fire Department. Upon termination of any lease existing at any time between FSRE and the Fire Department, the Town shall have the right of first refusal to enter into a new lease of the Real Estate with FSRE as against all other parties except the Fire Department.

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 10.

(11) COMPENSATION TO THE FIRE DEPARTMENT-

- (a) The Town's fiscal year 2018-2019 appropriation to the Fire Department for the provision of fire protection services is \$545,914. The amount of funding provided by the Town each year shall be referred to as the "Base Compensation," which Base Compensation for each year of this Contract shall be determined by the annual budget that is approved by the Town for continued operations of the Fire Department. To reiterate, \$545,914 shall be considered the base compensation for FY 2018/2019. No annual total compensation shall ever be less than the Base Compensation, plus annual debt service expenses, which have been specifically approved by the Town Council. Base Compensation shall include the debt service incurred by the Fire Department, if any, for FY 2018-2019 for the Fire Department's financing of the construction of a new fire station at 15 South Dogwood Trail, Southern Shores, NC. Once any debt as approved by the Town's governing board has been satisfied, the corresponding debt service expense shall no longer be considered a part of the Base Compensation.

Upon approval by the Town's governing board of an annual budget submitted by the Fire Department, the Town shall appropriate, and subsequently disburse in two (2) equal amounts bi-annually and no later than August 1 and February 1

respectively, funds to compensate the Fire Department in amounts equal one-half of the Base Compensation (except to the extent that the Base Compensation is paid out based on some other agreed-upon payment schedule) approved by the Town provided for that year.

(b) The Fire Department may seek other sources of revenue including, but not limited to, gifts, donations, grants, sales of promotional items, additional fire protection service customers (but only after obtaining the Town's prior written approval in each instance for the Fire Department to serve those other customers), and fees for service (but only after obtaining the Town's prior written approval in each instance to charge the said fees for service).

(c) The Town acknowledges that the Fire Department is currently a party to a contract with Dare County to provide Fire Protection Services to Martin's Point Subdivision.

(12) **EXPANDED SCOPE/ADDITIONAL WORK-** The Town and Fire Department agree that at any time during the term of this Contract either party may initiate discussions regarding the expansion of the scope of the Contract to include expanded or additional services to be provided to the Town by the Fire Department. If such expansion of scope is agreed to and implemented, the financial terms and other terms of this Contract shall be changed to reflect the new scope.

(13) **AVAILABILITY OF RECORDS-** As the Fire Department is a contractor of the Town, agents of the Town and/or any citizen may, upon reasonable request and notice, inspect the financial records of the Fire Department by appointment with the Treasurer or leadership of the Fire Department during normal business hours.

(14) **INSURANCE OBLIGATIONS-**

(a) The Fire Department agrees to maintain insurance coverage, the premiums for which shall be included in the budget of the Fire Department, said coverage to be as follows:

(i) The insurance coverage to be maintained by the Fire Department shall be as follows:

a) Workers' Compensation: Coverage to apply to all volunteers for statutory limits in compliance with the applicable State and Federal laws. The policy must include employer's liability with a limit of \$100,000.00 each accident; \$100,000 bodily injury or disease for each employee and \$500,000.00 bodily injury or disease policy limit.

b) Comprehensive General Liability: Shall have minimum limits of \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include premises and/or operations, products and/or completed operations, broad form property damage, and a contractual liability endorsement.

c) Business Auto Policy: Shall have minimum limits of \$1,000,000.00 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include: owned vehicles, hired and non-owned vehicles, and employee non-ownership.

d) Professional Errors and Omissions Liability: Coverage shall have minimum limits of \$1,000,000.00 per claim and \$2,000,000.00 aggregate.

e) Umbrella Liability: Coverage shall have a minimum limit of \$1,000,000.00 with underlying coverages of compensation/employer's liability.

(ii) Additional special requirements shall be as follows:

a) The Fire Department shall include the Town as an additional insured on each of the liability policies required to be maintained by this Contract.

b) The Fire Department shall maintain current, valid insurance policies meeting the requirements stated above during the entire duration of this Contract. The Fire Department shall insure that for any policy of insurance held by the Fire Department pursuant to this Contract that the Town receives any certificates for new insurance policies within thirty (30) days of the effective date of the policy and that the Town receives renewal certificates more than thirty (30) days prior to any expiration date on every policy. The Fire Department shall ensure that the Town is provided thirty (30) days' notice of any event of a cancellation or modification of any policy of insurance held by the Fire Department pursuant to this Contract. The Fire Department shall insure that certificates of insurance meeting the required insurance provisions shall be forwarded to the Town. The Fire Department shall insure that the insurance certificates contain no language stating or implying that no liability shall be imposed upon the insurance company for failure to provide the Fire Department and the Town with the notice required by this Contract.

(b) FSRE agrees to maintain reasonable liability insurance coverage, as protection from judgments of any kind, including but not limited to insurance coverage for claims of premises liability and general liability insurance. FSRE agrees to include the Fire Department and the Town as a named insured on any policies of insurance maintained pursuant to this Contract. In the event the Fire Department maintains sufficient insurance coverage to satisfy this provision, FSRE need not purchase additional insurance unless it feels such purchase is reasonably necessary.

- (c) FSRE and/or the Fire Department shall maintain adequate and reasonable Property Insurance upon the Real Property and the Personal Property Assets (as defined in this Contract), including all buildings, building improvements and personal property, in an amount equal to full insurable replacement cost. FSRE and/or the Fire Department, as the case may be, agrees to include the Town as a named insured on any policies of property insurance maintained pursuant to this Contract
- (d) Upon request from the Town and in each instance, FSRE and the Fire Department shall provide the Town with copies of any or all insurance policies and declaration pages associated therewith that are required to be carried under this Section 14.

(15) **EVENTS OF TERMINATION**- Except as otherwise provided herein, one or more of the following shall constitute Events of Termination under this Contract:

- (a) The dissolution, insolvency, receivership, involuntary bankruptcy or voluntary bankruptcy of the Fire Department or FSRE.
- (b) The failure of the Fire Department to maintain a continuous certification by the DOI and its OSFM, or any successive governmental agencies responsible for fire department certification in the State of North Carolina, of a public protection classification rating of not less than Public Protection Class 7 as that term is currently interpreted and defined under Section .0900 of Subchapter 05A, Chapter 05 of Title 11 of the North Carolina Administrative Code (NCAC).
- (c) The failure of the Fire Department to at all times maintain effective Mutual Aid Agreements with each of the fire departments serving jurisdictions contiguous to the Town of Southern Shores. This event of termination shall not apply if the cancellation of the mutual aid contract/agreement is due to circumstances that are beyond the control of the Fire Department (for example, when the actions of a town's governing body cancels, terminates, suspends or otherwise renders a mutual aid agreement ineffective).
- (d) The Town's receipt of written notice from the Fire Department that the Fire Department is unable to provide fire protection services for the Town due to an immediate lack of available volunteer firefighters.
- (e) A decision by the Town to establish a municipal fire department or to use another entity to provide fire services.
- (f) Inclusion of the Town in a Fire Protection District in which Fire Protection Services for the Town and its citizens will be provided by Dare County through any means allowed by law for Dare County to provide such services.

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 15.

(16) **EFFECT OF AN EVENT OF TERMINATION-** Upon the occurrence of an Event of Termination:

- (a) The Town shall have the right to take immediate possession of the Real Property and the Personal Property Assets if in the Town's judgment such action is necessary to continue to maintain adequate Fire Protection Services to the Town without interruption.
- (b) The Town shall provide the Fire Department and FSRE with notice of the occurrence of an Event of Termination. If such Event of Termination is not cured or remedied by the Fire Department and FSRE within thirty (30) days after the Fire Department and FSRE receive such written notice from the Town, the Town shall have the right to terminate this Contract. A termination of this Contract under this Section 16 shall cause the rights and obligations of the Parties to this Contract to terminate and cease, except to the extent provided in Sections 9, 10 and 17 herein, or as expressly provided otherwise in this Contract.

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 16.

(17) **REQUIRED CONVEYANCE OF ALL PROPERTY UPON TERMINATION-**

- (a) Notwithstanding any provision to the contrary in this Contract, if this Contract is terminated under Section 16 of this Contract for any of the reasons set forth in Section 15 of this Contract, the Fire Department and/or FSRE shall, upon receipt of written notice from the Town, immediately and unconditionally convey and deliver to the Town (i) a general warranty deed describing all of the Real Property (the "Deed"), and (ii) a bill of sale (the "Bill of Sale") describing all of the personal property, including fixed assets and intangibles (the "Personal Property Assets") owned by the Fire Department and FSRE. Upon the Town's receipt and acceptance of the Deed and the Bill of Sale, the Town shall agree to accept and assume, and to hold the Fire Department and/or FSRE harmless from, any indebtedness previously incurred by the Fire Department and/or FSRE that is secured by the Real Property and/or the Personal Property Assets as collateral for such indebtedness.
- (b) Upon the occurrence of an Event of Termination and subsequent conveyance by the Fire Department and FSRE to the Town of the Real Property and the Personal Property Assets, and notwithstanding the provisions of Section 20(a) of this Contract, the Town will agree to indemnify and hold the directors, officers, and volunteers of the Fire Department and FSRE harmless for any cost or expense incurred by the Town in connection with such Event of Termination, except for actual malfeasance or criminality on the part of those indemnified by this subparagraph (b).

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 17.

- (18) **RIGHTS TO ASSETS AND FINANCIAL RESPONSIBILITY**- Other than as specifically set forth in this Contract, the Town has no claim or other rights related to the property and assets of the Fire Department. Except as specifically set forth in this Contract, the Town shall have no financial responsibility for or control over the debts, encumbrances or liabilities of the Fire Department. In the future the Town, in its sole discretion, may agree to co-sign or guarantee a future loan, lease, bond or financial instrument on behalf of the Fire Department and under such terms as agreed to by the Parties.
- (19) **RELATION TO PRIOR CONTRACTS; FINANCING PROVISIONS**-
- (a) Effective as of the Effective Date, the Contract replaces and supersedes all previous contracts entered into between the Parties, including but not limited to the 2009 Fire Department Contract, the 2009 FSRE Contract, the 2018 Contract and the 2019 Contract.
- (b) 2009 Memorandum of Agreement, the 2018 Memorandum of Contract, and the 2019 Memorandum of Contract, shall be and are hereby superseded and replaced by the 2022 Memorandum of Contract attached hereto as **Exhibit A**.
- (c) All notices required by the Contract to be sent by any one or more of the Parties (the "Party Giving Notice") to one or more of the other Parties shall also be sent by the Party Giving Notice to all (1) third party tenants, other than any of the Parties, under a lease (or under a sublease or assignment of such lease) of any of the Real Property or Personal Property Assets now or hereinafter located on the Real Property (each "Tenant"), and (2) lenders holding a mortgage, equipment lease, ground lease, or other form of financing instrument encumbering any of the Real Property or Personal Property Assets now or hereinafter located on the Real Property (each "Lender"). The Fire Department and FSRE shall promptly provide the Town with the name and mailing address of all Lenders and Tenants and any subsequent changes to their mailing addresses.
- (d) All notices required by the Contract to be sent by any Lender or any Tenant to one or more of the Parties shall also be sent by such Lender or such Tenant to all of the other Parties to the Contract, including but not limited to the Town.
- (e) The Town shall have the right and option (but not the duty or obligation except as may be expressly provided otherwise in the Contract) to cure any default by the Fire Department and/or FSRE in any third party financing of the Real Property, improvements, equipment, assets or other real or personal property located on, used by or associated with the Real Property and Personal Property Assets, or the Fire Protection Services, and/or to exercise the a right of redemption under such financing in the event of default, and/or

assume the indebtedness of any such financing in the event of default. In the case of such cure, redemption or assumption by the Town, the Fire Department and FSRE shall be required to deed, transfer and convey the Real Property and the Personal Property Assets to the Town in the same manner set forth in Section 17(a) of the Contract.

(f) In the event the Fire Department and FSRE finance improvements to the Real Property (including but not limited to the construction of a new fire station) as equipment under an equipment lease and/or sublease, the Parties agree and understand that such improvements shall be included as part of any transfer and conveyance to the Town under Sections 17(a) and 19(g) of the Contract, notwithstanding how such improvements are characterized in the financing documents.

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 19.

(20) **INDEMNIFICATION-**

- (a) Except as provided in Section 17 of this Contract, the Fire Department and FSRE jointly and severally agree to indemnify and hold the Town harmless from and against any and all claims, demands, actions, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and litigation expenses) that the Town may incur that are directly or indirectly attributable, in whole or in part, to a breach of this Agreement by the Fire Department or FSRE, or any other acts or omissions by the Fire Department or FSRE.
- (b) The Town agrees to indemnify and hold the Fire Department and FSRE harmless from and against any and all claims, demands, actions, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and litigation expenses) that the Fire Department and FSRE may incur that are directly or indirectly attributable, in whole or in part, to a breach of this Agreement by the Town, or any other acts or omissions by the Town.

(21) **SEVERABILITY-** Every provision of this Contract intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract.

(22) **SUIT COSTS-** In the event any Party shall institute an action to enforce the provisions of this Contract, the Party or Parties prevailing in such action, whether by adjudication, arbitration, or settlement, shall be entitled to recover suit costs, including reasonable attorney's fees, from the other Party or Parties.

(23) **APPLICABLE LAW-** This Contract shall be construed and interpreted under the laws of the State of North Carolina.

- (24) **PARTIES**- This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. As used herein, words in singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.
- (25) **NOTICES**- Notices hereunder shall be effective and deemed given when deposited in the United States Mails, postage prepaid, certified mail with return receipt requested. Alternatively, the party may use a nationally recognized overnight delivery service. Notices shall be addressed, in the case of the Town to:

Town of Southern Shores
 Attention Town Manager
 5375 N. Virginia Dare Trail
 Southern Shores, NC 27949

With a required copy to:

L. Phillip Hornthal, III
 Town Attorney
 Hornthal, Riley, Ellis & Maland, L.L.P.
 301 E. Main St.
 Elizabeth City, North Carolina 27909

In the case of the Fire Department:

Southern Shores Volunteer Fire Department, Inc.
 15 South Dogwood Trail
 Southern Shores, NC 27949

In the case of FSRE:

Fire Service Real Estate, Inc.
 15 South Dogwood Trail
 Southern Shores, NC 27949

Any Party may change the address to which such notices are to be addressed by giving each other party notice in the manner herein set forth.

- (26) **NON-WAIVER**- The waiver by either party hereto of a breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision of this Contract.
- (27) **COUNTERPARTS**- This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

- (28) **HEADINGS**- The headings, subheadings and captions in this Contract and in any exhibit hereto are for reference purposes only and shall not affect the meaning or interpretation of this Contract.
- (29) **ENTIRE AGREEMENT**- This Contract contains the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all negotiations, prior discussions, agreements, arrangements and understandings, written or oral, relating to the subject matter hereof.
- (30) **AMENDMENTS**- This Contract may not be amended except by written instrument duly executed by or on behalf of all of the parties hereto.
- (31) **LENDER APPROVALS**- Fire Department and FSRE represent and warrant to the Town that their entering into and executing this Contract does not constitute an event of default on any loans held by its Lenders that pertain to the Real Property, and that any such Lenders have approved this Contract to the extent such approval is necessary under applicable loan documents and loan agreements.

[signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have executed this Contract, and have been duly authorized to do so.

SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.:

By: _____

Chairman, Board of Directors

ATTEST: _____

Secretary

(corporate seal)

TOWN OF SOUTHERN SHORES:

By: _____

Mayor

ATTEST: _____

Town Clerk

(corporate seal)

FIRE SERVICE REAL ESTATE, INC.:

By: _____

Name: _____

Title: _____

ATTEST: _____

Secretary

(corporate seal)

Pre-Audit Certification:

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

Finance Officer, Town of Southern Shores

EXHIBIT A
APPROVED FORM OF MEMORANDUM OF CONTRACT

(See attached)

Prepared by and return to:
 Robert B. Hobbs, Jr., Attorney
 Hornthal, Riley, Ellis & Maland, LLP
 2502 S. Croatan Highway
 Nags Head, North Carolina 27959

Excise Tax: \$-0-
 Transfer Tax: \$-0-

Tax Parcel: 022110000 and 022519012
 LT # _____

MEMORANDUM OF CONTRACT

NORTH CAROLINA, DARE COUNTY

THIS MEMORANDUM OF AMENDED AND RESTATED CONTRACT (the "Memorandum of Amended and Restated Contract"), dated November 1, 2022, (the "Contract Date"), by and between TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation, whose mailing address is Attention Town Manager, 5375 N. Virginia Dare Trail, Southern Shores, NC 27949 (the "Town"); SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC., a North Carolina nonprofit corporation, whose mailing address is Southern Shores Volunteer Fire Department, Inc., 15 South Dogwood Trail, Southern Shores, NC 27949 (the "Fire Department"); and FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation, whose mailing address is Fire Service Real Estate, Inc., 15 South Dogwood Trail, Southern Shores, NC 27949 ("FSRE") (the Town, the Fire Department and FSRE collectively the "Parties").

WHEREAS, FSRE owns certain real property located in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina and being more particularly described in that certain Deed of Gift recorded January 30, 2009 in Book 1790, Page 153 of the Dare County Registry, with property addresses of 15 South Dogwood Trail, Southern Shores, NC 27949 (the "15 South Dogwood Property") and 28 East Dogwood Trail, Southern Shores, NC 27949 (the "28 East Dogwood Property") (the property described in Deed recorded in Book 1790, Page 153 of the Dare County Registry) (collectively, the "Real Property"); and

WHEREAS, currently the Fire Department provides the Town services to prevent, limit, and reduce damage or personal injury caused by fire or other emergency under a contract dated February 1, 2009 and scheduled to expire on June 30, 2019 (the "2009 Fire Department Contract"); and

WHEREAS, the Fire Department previously conveyed the Real Property to FSRE;
and

WHEREAS, the Real Property provided by FSRE to the Fire Department assists the Fire Department in fulfilling the services to the Town required under the 2009 Fire Department Contract;
and

WHEREAS, the Town and FSRE are parties to a contract entitled, "Contract Between the Town of Southern Shores and Fire Service Real Estate, Inc." dated February 1, 2009 (the "2009 FSRE Contract");
and

WHEREAS, certain provisions of the 2009 FSRE Contract are contained in that certain Memorandum of Agreement dated February 26, 2009 and recorded in Book 1793, Page 146, Dare County Registry (the "2009 Memorandum of Agreement"); and

WHEREAS, the Parties entered into a new continuing contract, dated November 7, 2018, effective July 1, 2019 (the "2018 Contract"), for the purpose of the Fire Department continuing to provide services for the Town to prevent, limit, and reduce damage or personal injury caused by fire or other emergency; and

WHEREAS, the Parties entered into and recorded a Memorandum of Contract dated November 7, 2018 and recorded in Book 2273, Page 371, Dare County Registry (the "2018 Memorandum of Contract"); and

WHEREAS, the Parties entered into an amended and restated continuing contract, dated February 26, 2019, effective July 1, 2019 (the "2019 Contract"), for the purpose of the Fire Department continuing to provide services for the Town to prevent, limit, and reduce damage or personal injury caused by fire or other emergency; and

WHEREAS, the Parties entered into and recorded a Memorandum of Contract dated February 26, 2019 and recorded in Book 2286, Page 427, Dare County Registry (the "2019 Memorandum of Contract"); and

WHEREAS, the Parties now desire to make certain changes to the 2019 Contract; and

WHEREAS, the term "Contract Date" shall mean the date of the 2022 Contract; and

WHEREAS, the term "Effective Date" shall mean the date that the last one of the Parties has signed this Contract; and

WHEREAS, the term "Contract" shall have the same meaning as "2022 Contract."

NOW, THEREFORE, this Memorandum of Amended and Restated Contract shall serve as record notice that the following agreements apply to the Real Property and the Personal Property Assets, and shall replace in its entirety the 2018 Memorandum of Contract and the 2019 Memorandum of Contract:

1. Section 9 Intentionally omitted.
2. Section 10 of the Contract provides as follows:

(10) ADDITIONAL PROPERTY RIGHTS, OBLIGATIONS AND COVENANTS-

- (a) **Right to Lease the 28 East Dogwood Property to Dare County for EMS Service.**
FSRE and/or the Fire Department shall have the right to lease the 28 East Dogwood Property to Dare County (the "County") for use by the County as an Emergency Medical Services ("EMS") facility (the "County EMS Lease"). Any County EMS Lease shall be expressly subject to the terms and provisions of this Contract, as amended from time to time. Notwithstanding anything to the contrary in this Contract or in any lease of the 28 East Dogwood Property, no one in lawful possession of the 28 East Dogwood Property shall use the 28 East Dogwood Property for any purpose other than (i) EMS purposes, or (ii) Fire Protection Services and the other purposes expressly described in this Contract, and for no other purpose, without the prior written consent of the Town in each instance. FSRE and/or the Fire Department shall provide the Town with 20 days' written notice prior to entering into any agreement, assignment, modification, amendment, extension, or termination of any lease or license pertaining to the County EMS Lease; violation of this notice requirement shall constitute a default under the terms of this Contract.
- (b) **Required Town Approval of Plans-** The Town shall have the right to approve all plans for the partial or full construction, reconstruction, modification, expansion or any other changes to improvements on any of the Real Property, including but not limited to construction of the new EMS facility by the County on the 28 East Dogwood Property. Such approval shall not be unreasonably delayed, conditioned or withheld; but the Town's disapproval of plans for improvements designed for uses of any of the Real Property that are not consistent with the approved uses expressly set forth in this Contract shall be deemed to be a reasonable withholding of Town approval.
- (c) **Right of First Negotiation-** During the term of this Contract, in the event the Fire Department or FSRE contemplates or considers the sale of any real property owned by FSRE or the Fire Department, the Town shall have the right to be the first party to enter negotiations and to make an offer to purchase such real property. This provision shall not apply to the County EMS Lease.

- (d) **Right of First Refusal-** In the event of unsuccessful negotiations and/or in the event FSRE or the Fire Department receive a bona fide offer from a third party which is acceptable to FSRE and/or the Fire Department for the purchase of any or all of the Real Property, shall give written notice by certified mail, return receipt requested, to the Town of the existence and terms and conditions of such offer, furnishing the Town with a correct and true copy of such offer, and the Town shall have sixty (60) days thereafter to notify FSRE and the Fire Department that the Town agrees to purchase the same property on the same terms and conditions as are contained in such offer. If the Town declines to make such offer, or fails to reply to FSRE's or the Fire Department's written notice of such offer, within such sixty (60) day period, FSRE or the Fire Department may accept such offer from the third party. This right of first refusal shall continue to be in effect until (1) the conveyance of such property pursuant to the terms of this Right of First Refusal, or (2) thirty (30) years after the Effective Date, whichever occurs first. Any written notice by FSRE or the Fire Department to the Town of the right of first refusal shall not relieve FSRE or the Fire Department of their obligation under this Right of First Refusal to give further notices of right of first refusal upon any future offers by third parties for any of the Real Property. This provision shall not apply to the County EMS Lease.
- (e) **Covenant to Not Demolish Property or Diminish in Value or Transfer-** Neither the Fire Department nor FSRE shall demolish, raze, or cause diminishment of value of, any of the Real Property. Since the County's plans under the proposed County EMS Lease call for the County, as tenant, to demolish the current fire station located on the 28 East Dogwood Property and construct a new County EMS facility, the covenant described in this subsection (e) shall not apply to the County's planned demolition of the fire station located on the 28 East Dogwood Property as of the date of this 2022 Contract.
- (f) **Mortgages and Encumbrances-** Other than the existing mortgage lien presently held by HomeTrust Bank on the 15 South Dogwood Trail Property, neither the Fire Department nor FSRE shall mortgage or encumber the any of the Real Property without the Town's prior written consent in each instance.
- (g) **Use Covenant-** Except for the limited modification contained in Section 10(a) of this Contract, the Real Property shall only be used for Fire Protection Services and the other purposes expressly described in this Contract, and for no other purpose, without the prior written consent of the Town in each instance.
- (h) **Net Proceeds from any Property Sales-** Any net proceeds realized by the Fire Department or FSRE from the sale of any of the Real Property shall first be applied towards the principal balance owed by FSRE and/or the Fire Department on any remaining outstanding loan made to FSRE and/or the Fire Department for the construction of a new fire station at 15 South Dogwood Trail, Southern Shores, NC, and next towards any succeeding outstanding loan balances, whether secured or unsecured, in order of greatest amounts owed. Any proceeds remaining after said loans have been paid off shall be transferred to the Fire Department (if not already in the Fire Department's possession) and shall then be fully applied by the Fire Department to offset the Base Compensation to be paid by the Town in the next fiscal year.

- (i) **Notice to Town-** FSRE shall provide both the Fire Department and the Town with at least (20) days written notice of its intentions prior to encumbering, pledging or otherwise disposing of any portion of the Real Property in any manner other than a lease to the Fire Department or the Town for the purposes of providing fire services. Said notice shall include any information pertinent to the action FSRE intends to take, including but not limited to the parties, the consideration and the description of any parcel subject to the action intended by FSRE. FSRE shall provide any parties involved with the intended action full disclosure of this Contract, including its exhibits. Notwithstanding the foregoing, however, the Parties represent that the Town has received sufficient notice of the Fire Department's plan to lease the 28 East Dogwood Property to Dare County for EMS purposes as described in Section 10(a) of this Contract.
- (j) **Required Lease.** FSRE shall enter into a lease of the Real Property with the Fire Department. Upon termination of any lease existing at any time between FSRE and the Fire Department, the Town shall have the right of first refusal to enter into a new lease of the Real Estate with FSRE as against all other parties except the Fire Department.

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 10.

3. Section 15 of the Contract provides as follows:

(15) **EVENTS OF TERMINATION-** Except as otherwise provided herein, one or more of the following shall constitute Events of Termination under this Contract:

- (a) The dissolution, insolvency, receivership, involuntary bankruptcy or voluntary bankruptcy of the Fire Department or FSRE.
- (b) The failure of the Fire Department to maintain a continuous certification by the DOI and its OSFM, or any successive governmental agencies responsible for fire department certification in the State of North Carolina, of a public protection classification rating of not less than Public Protection Class 7 as that term is currently interpreted and defined under Section .0900 of Subchapter 05A, Chapter 05 of Title 11 of the North Carolina Administrative Code (NCAC).
- (c) The failure of the Fire Department to at all times maintain effective Mutual Aid Agreements with each of the fire departments serving jurisdictions contiguous to the Town of Southern Shores. This event of termination shall not apply if the cancellation of the mutual aid contract/agreement is due to circumstances that are beyond the control of the Fire Department (for example, when the actions of a town's governing body cancels, terminates, suspends or otherwise renders a mutual aid agreement ineffective).
- (d) The Town's receipt of written notice from the Fire Department that the Fire Department is unable to provide fire protection services for the Town due to an immediate lack of available volunteer firefighters,

- (e) A decision by the Town to establish a municipal fire department or to use another entity to provide fire services.
- (f) Inclusion of the Town in a Fire Protection District in which Fire Protection Services for the Town and its citizens will be provided by Dare County through any means allowed by law for Dare County to provide such services.

4. Section 16 of the Contract provides as follows:

(16) **EFFECT OF AN EVENT OF TERMINATION-** Upon the occurrence of an Event of Termination:

- (a) The Town shall have the right to take immediate possession of the Real Property and the Personal Property Assets if in the Town's judgment such action is necessary to continue to maintain adequate Fire Protection Services to the Town without interruption.

The Town shall provide the Fire Department and FSRE with notice of the occurrence of an Event of Termination. If such Event of Termination is not cured or remedied by the Fire Department and FSRE within thirty (30) days after the Fire Department and FSRE receive such written notice from the Town, the Town shall have the right to terminate this Contract. A termination of this Contract under this Section 16 shall cause the rights and obligations of the Parties to this Contract to terminate and cease, except to the extent provided in Sections 9, 10 and 17 herein, or as expressly provided otherwise in this Contract.

5. Section 17 of the Contract provides as follows:

(17) **REQUIRED CONVEYANCE OF ALL PROPERTY UPON TERMINATION-**

- (a) Notwithstanding any provision to the contrary in this Contract, if this Contract is terminated under Section 16 of this Contract for any of the reasons set forth in Section 15 of this Contract, the Fire Department and/or FSRE shall, upon receipt of written notice from the Town, immediately and unconditionally convey and deliver to the Town (i) a general warranty deed describing all of the Real Property (the "Deed"), and (ii) a bill of sale (the "Bill of Sale") describing all of the personal property, including fixed assets and intangibles (the "Personal Property Assets") owned by the Fire Department and FSRE. Upon the Town's receipt and acceptance of the Deed and the Bill of Sale, the Town shall agree to accept and assume, and to hold the Fire Department and/or FSRE harmless from, any indebtedness previously incurred by the Fire Department and/or FSRE that is secured by the Real Property and/or the Personal Property Assets as collateral for such indebtedness.
- (b) Upon the occurrence of an Event of Termination and subsequent conveyance by the Fire Department and FSRE to the Town of the Real Property and the Personal Property Assets, and notwithstanding the provisions of Section 20(a) of this Contract, the Town will agree to indemnify and hold the directors, officers, and volunteers of the Fire Department and FSRE harmless for any cost or expense incurred by the Town in connection with such Event of Termination, except for actual malfeasance or criminality on the part of those indemnified by this subparagraph (b).

6. Section 19 of the Contract provides as follows:

(19) RELATION TO PRIOR CONTRACTS; FINANCING PROVISIONS-

(a) Effective as of the Effective Date, the Contract replaces and supersedes all previous contracts entered into between the Parties, including but not limited to the 2009 Fire Department Contract, the 2009 FSRE Contract, the 2018 Contract and the 2019 Contract.

(b) 2009 Memorandum of Agreement, the 2018 Memorandum of Contract, and the 2019 Memorandum of Contract, shall be and are hereby superseded and replaced by this 2022 Memorandum of Contract.

(c) All notices required by the Contract to be sent by any one or more of the Parties (the "Party Giving Notice") to one or more of the other Parties shall also be sent by the Party Giving Notice to all (1) third party tenants, other than any of the Parties, under a lease (or under a sublease or assignment of such lease) of any of the Real Property or Personal Property Assets now or hereinafter located on the Real Property (each "Tenant"), and (2) lenders holding a mortgage, equipment lease, ground lease, or other form of financing instrument encumbering any of the Real Property or Personal Property Assets now or hereinafter located on the Real Property (each "Lender"). The Fire Department and FSRE shall promptly provide the Town with the name and mailing address of all Lenders and Tenants and any subsequent changes to their mailing addresses.

(d) All notices required by the Contract to be sent by any Lender or any Tenant to one or more of the Parties shall also be sent by such Lender or such Tenant to all of the other Parties to the Contract, including but not limited to the Town.

(e) The Town shall have the right and option (but not the duty or obligation except as may be expressly provided otherwise in the Contract) to cure any default by the Fire Department and/or FSRE in any third party financing of the Real Property, improvements, equipment, assets or other real or personal property located on, used by or associated with the Real Property and Personal Property Assets, or the Fire Protection Services, and/or to exercise the a right of redemption under such financing in the event of default, and/or assume the indebtedness of any such financing in the event of default. In the case of such cure, redemption or assumption by the Town, the Fire Department and FSRE shall be required to deed, transfer and convey the Real Property and the Personal Property Assets to the Town in the same manner set forth in Section 17(a) of the Contract.

(f) In the event the Fire Department and FSRE finance improvements to the Real Property (including but not limited to the construction of a new fire station) as equipment under an equipment lease and/or sublease, the Parties agree and understand that such improvements shall be included as part of any transfer and conveyance to the Town under Sections 17(a) and 19(g) of the Contract, notwithstanding how such improvements are characterized in the financing documents.

7. Other Provisions. The other provisions set forth in the Contract are hereby incorporated by reference in this Memorandum.

(continued on the following page)

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered as of the day and year first above written.

FSRE:

FIRE SERVICE REAL ESTATE, INC.

BY: _____
Chairman of the Board

ATTEST:

Secretary

NORTH CAROLINA, DARE COUNTY

I, _____, a Notary Public of the County of _____, and State aforesaid, certify that _____ personally came before me this day and acknowledged that (s)he is Secretary of FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its Chairman of the Board, and attested by (him) (her) as its Secretary.

Witness my hand and official stamp or seal, this ____ day of _____, 20____.

Notary Public

Notary's printed or typed name: _____

My commission expires: _____

(AFFIX NOTARY SEAL)

FIRE DEPARTMENT:

SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.

BY: _____

Chairman of the Board

ATTEST:

Secretary

NORTH CAROLINA, DARE COUNTY

I, _____, a Notary Public of the County of _____, and State aforesaid, certify that _____ personally came before me this day and acknowledged that (s)he is Secretary of SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC., a North Carolina nonprofit corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its Chairman of the Board, and attested by (him) (her) as its Secretary.

Witness my hand and official stamp or seal, this ____ day of _____, 20____.

Notary Public

Notary's printed or typed name: _____

My commission expires: _____

(AFFIX NOTARY SEAL)

TOWN:

TOWN OF SOUTHERN SHORES

BY: _____
Mayor

ATTEST:

Town Clerk

(corporate seal)

STATE OF NORTH CAROLINA, COUNTY OF DARE

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that he is the Mayor of The Town of Southern Shores, a North Carolina municipal corporation, and that by authority duly given and as the act of the Town, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by _____, its Town Clerk.

Witness my hand and official stamp or seal, this ____ day of _____, 20__.

Notary Public

Notary's printed or typed name: _____

My commission expires: _____

(AFFIX NOTARY SEAL)