



Town of Southern Shores

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

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

www.southernshores-nc.go

FEBRUARY 26, 2019

SPECIAL MEETING

COUNCIL PLANNING SESSION

9:00 A.M.-PITTS CENTER

1. Opening (9:00 am)
 - A. Call Meeting to Order
 - B. Pledge of Allegiance
 - C. Moment of Silence
 - D. Approval of Agenda
2. Southern Shores Vol. Fire Dept. Facilities Construction and Financing Report (Chief Limbacher) (9:00-9:30 am)
3. Town Facilities Assessment Report - *Oakley Collier Architects, PA* (Tim Oakley and Ann Collier) (9:30-10:30 am)
4. Break (10:30-10:45 am)
5. Beach Management Plan Report - *APTIM Coastal Planning & Engineering of North Carolina, Inc.* (Ken Wilson) (10:45-11:30 am)
6. Financial Planning - Possible Beach Nourishment - *DEC Associates, Inc.* (Doug & Andrew Carter) (11:30-12:15 pm)
7. Council Comments (12:15-12:45 pm)
8. General Public Comment (Limit: 3 minutes per speaker) (12:45-1:00 pm)
9. Adjourn

MEMORANDUM

February 20, 2019

To: Town Council
From: Town Manager
Re: SSVFD Construction Financing for New Fire Station

As a part of Council's February 26, 2019 planning session (Special Meeting), I have requested room on the agenda for the Council to receive a brief update from SSVFD Fire Chief Ed Limbacher on the current progress of site clearing and commencement of construction of his Department's new fire station. Also present at your planning session will be Town Attorney Robert Hobbs to brief the Council on the SSVFD lender's communication of requested changes to the current 10-year contract between the SSVFD and the Town of Southern Shores. Sometime after the Town entered into the new contract, the Town Attorney and I were notified by the lender's local closing attorney that due to the type of financing mechanism being provided the SSVFD by its lender, certain changes in the SSVFD's new contract with the Town were being requested in order for the lender to protect its security interest. If the documentation on those requested amendments to the new contract is not included in your books today with this memorandum, it will be provided to you as soon as Mr. Hobbs and I receive it prior to your February 26 planning session.

Prepared by and return to: Casey & Robbins, PC

NORTH CAROLINA

COUNTY OF DARE

COMPREHENSIVE DECLARATION
OF EASEMENTS

THIS COMPREHENSIVE DECLARATION OF EASEMENTS, entered into this _____ day of February, 2019 by and between FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation (hereinafter referred to as "FSRE") and TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation, (hereinafter referred to as "TOWN").

W I T N E S S E T H:

WHEREAS, FSRE is the owner of a certain tract or parcel of real property located at 15 S. Dogwood Trail, Southern Shores in the County of Dare and State of North Carolina and more particularly described as Parcel Three in that deed recorded in Deed Book 1793, Page 153 of the Dare County Public Registry and incorporated herein by reference (said parcel being hereinafter referred to as Parcel A); and

WHEREAS, TOWN is the owner of a certain tract or parcel of real property located at 27 Pintail Trail, Southern Shores in the County of Dare and State of North Carolina and being a portion of that real property more particularly described in that deed recorded in Deed Book 452, Page 409 of the Dare County Public Registry and incorporated herein by reference (said Parcel being hereinafter referred to as Parcel B); and

WHEREAS, Parcel A and Parcel B are adjoining tracts of land and are depicted on that certain map or plat entitled in part "Survey for Fire Service Real Estate, Inc." prepared by BILD Surveying under date of _____ and attached hereto as Exhibit A (herein, the "Survey"); and

WHEREAS, FSRE intends to develop Parcel A by constructing a fire station to be operated by the Southern Shores Volunteer Fire Department, Inc., a North Carolina nonprofit corporation (herein, "SSVFD"); and

WHEREAS, TOWN occupies Parcel B as a public works facility; and

WHEREAS, the parties hereto desire to enter into this comprehensive Declaration of Easements for the joint use of portions of Parcels A and B.

NOW THEREFORE, in consideration of the mutual benefits to be realized by such joint use, the mutual agreements set forth herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. FSRE does hereby establish, give, grant, and convey to TOWN, its respective successors, and assigns, and the tenants, customers, employees, and invitees, a non-exclusive easement over Parcel A appurtenant to Parcel B over that area depicted in Parcel B on the Survey as "Access Easement" for the purpose of (i) vehicle parking for Town employees; and (ii) ingress, egress and access by pedestrians and vehicles between Pintail Trail and Parcel B.

2. TOWN does hereby establish, give, grant, and convey to FSRE, its successors, and assigns and the tenants, customers, employees, and invitees, a non-exclusive easement over Parcel B appurtenant to Parcel A over that area depicted on the Survey as "Proposed Parking Easement Area" for the 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.

3. In connection with this Comprehensive Declaration of Easements, and in order to make such easements effective for the purposes herein contained, FSRE and TOWN do further agree that no party hereto shall, at any time prior to the termination of the easements herein granted, erect or construct, or cause to be erected or constructed, any fence, wall, curb, or other barrier between Parcel A and Parcel B, or in any manner interfere with or restrict the full and complete use and enjoyment by any party of the easements herein granted.

4. The easements, restrictions, and agreements provided for herein shall be effective upon execution of this Comprehensive Declaration of Easements by the parties hereto. The easements provided for herein shall run with the land and shall constitute a use for reciprocal benefits to and burdens upon Parcel A and Parcel B. The easements provided for herein shall inure to the benefit of and be binding upon the respective successors, assigns, heirs, and tenants of each party hereto and the customers, employees, and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership of Parcel A or Parcel B or any of them, or by any change of use, demolition, reconstruction, expansion, or other circumstances, except as specified herein. The agreement and undertakings by each party hereto shall be enforceable by any action in law or equity.

5. This instrument does not dedicate the said easements contained herein to the general public, nor does this instrument restrict the use and development of Parcel A or Parcel B except as stated herein. It is the intent of this instrument to grant reciprocal easements over parking, drives, sidewalks, and common areas as they exist from time to time without limiting the right of FSRE or TOWN to alter, demolish, or redevelop said areas.

6. Each party shall be responsible for its respective use of the easements described herein and, to the extent permitted by applicable law, shall, to the extent covered by applicable insurance, indemnify, defend and hold each other harmless for any loss or costs and in any actions whatsoever due to either party's use as described herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date 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)

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.

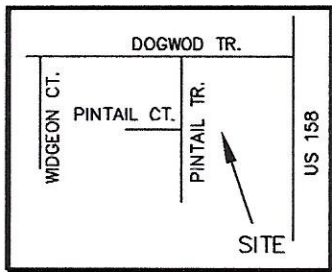
Witness my hand and official stamp or seal, this ____ day of _____, 20 ____.

Notary Public

Notary's printed or typed name: _____

My commission expires: _____

(AFFIX NOTARY SEAL)



VICINITY MAP

NTS

LEGEND

- IRON ROD/PIPE
- CONCRETE MONUMENT
- NAIL
- FG FINISH GRADE
- R/W RIGHT OF WAY
- NTS NOT TO SCALE
- PL PROPERTY LINE
- CL CENTER LINE
- MBL MINIMUM BUILDING LINE

28
SOUTHERN SHORES
BLOCK 129, SECTION C
(PC C, SL 51B)

PINTAIL CT
(30'R/W)

PINTAIL TRAIL
(30'R/W)

SOUTHERN SHORES LANDING
P.U.D.
(PC F, SL 413/PC F, SL 333/PC F, SL 393)

19

18

17

16

15

NOTES

- THIS SURVEY DEPICTS A PROPOSED PARKING EASEMENT
- PROPERTY IS LOCATED IN A F.I.R.M. ZONE X & AE(7') AS SHOWN (SUBJECT TO CHANGE BY F.E.M.A.)
- AREA -29,995sq.ft.(COORD.)
- DARE CO. PIN# 9867(18) 40 6372
- EXISTING IMPROVEMENTS TO THIS PROPERTY AND THE ADJACENT R/W, ARE NOT SHOWN

PRELIMINARY
(PROGRESS COPY)

REV. 2/13/19-PROP. EASEMENT/IMPROVEMENTS
REV. 6/13/18-TOPO/ROAD/FENCE

I, MARTIN BARNETTE CERTIFY THAT UNDER MY SUPERVISION THIS PLAT WAS DRAWN FROM AN ACTUAL FIELD LAND SURVEY; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:____; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH N.C.A.C. TITLE 21, CHAPTER 56, SECTION 1600. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NO. AND SEAL THIS

____ DAY OF _____, 20____

MARTIN BARNETTE, PLS L-3740

THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH.

SURVEY FOR:

FIRE SERVICE REAL ESTATE, INC.

PARCEL THREE
SOUTHERN SHORES FIRE STATION

AS REC.: DB 1790, PG 153

SOUTHERN SHORES ATLANTIC TWSP. DARE CO. N. CAROLINA

SCALE 1"=40'

FILE NO. 3999

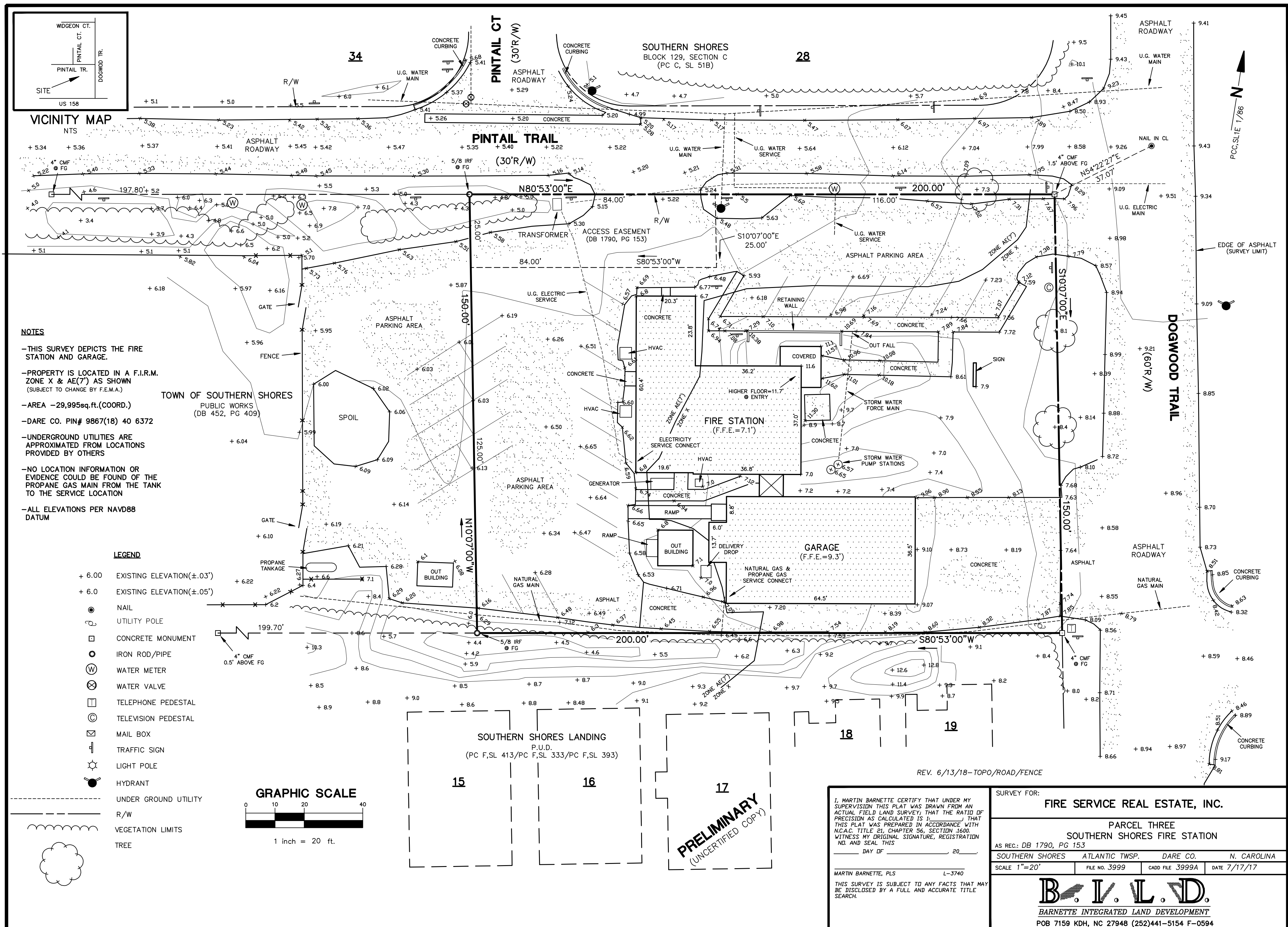
CADD FILE 3999A

DATE 7/17/17

B. I. L. D.

BARNETTE INTEGRATED LAND DEVELOPMENT

POB 7159 KDH, NC 27948 (252)441-5154 F-0594



Prepared by and return to:
S. Leigh Rodenbough, IV, Attorney
Brooks, Pierce, McLendon,
Humphrey & Leonard L.L.P.
PO Box 26000
Greensboro, NC 27420

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

Tax Parcel: 022519012
LT # _____

NORTH CAROLINA, DARE COUNTY

ASSIGNMENT OF FIRE SERVICES CONTRACT

THIS ASSIGNMENT is given this ____ day of February, 2019, by SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC., a North Carolina non-profit corporation whose mailing address is 15 South Dogwood Trail, Southern Shores, NC 27949, and FIRE SERVICE REAL ESTATE, INC., a North Carolina non-profit corporation whose mailing address is 15 South Dogwood Trail, Southern Shores, NC 27949 (collectively, the “Assignor”), to HOMETRUST BANK, a North Carolina banking corporation whose mailing address is PO Box 10, Asheville, NC 28802-0010, Attn.: John M. Tench, Senior Vice President (the “Lessor”).

Agreement

1. Assignor hereby conveys, transfers, assigns and sets over to Lessor all of the right, title and interest of Assignor in and to the Amended and Restated Fire Services Contract between the Town of Southern Shores, Southern Shores Volunteer Fire Department, Inc. and Fire Service Real Estate, Inc. dated as of February ____, 2019 (the “Fire Services Contract”), with certain provisions of the Fire Services Contract being contained in that certain Memorandum of Contract dated of even date with the Fire Services Contract and recorded on February ____, 2019 in Book ____, Page ____, Dare County Registry (the “2019 MOC”), between Assignor and the Town of Southern Shores, a North Carolina municipal corporation whose address is Town of Southern Shores, 5375 North Virginia Dare Trail, Southern Shores, NC 27949, Attn.: Town Manager (the “Town”) relating to the provision of fire services to the Town within or appurtenant to the Town’s boundaries from certain real property and improvements, and with equipment, owned by one or more of the entities comprising the Assignor, including, without

limitation, the real property located at 15 South Dogwood Trail, Southern Shores, NC 27949 and being more particularly described on the attached **Exhibit A** (the "Leased Property").

2. This Assignment is made as additional security for the performance by Assignor of all of its obligations under that certain approximately \$5,419,223 loan being made to Assignor by Lessor on or about the same date as this Assignment under that Municipal Lease and Option Agreement, Revenue Pledge and Security Agreement, Ground Lease, Sublease Agreement and related leasehold loan documents, as the same may be modified, amended, renewed, extended, supplanted or refinanced (collectively referred to as the "Secured Obligations"), for the construction and equipment of a new 13,453 square foot pre-engineered steel fire station on the Leased Property (the "Improvements").

3. Assignor and the Town represent and warrant to Lessor that Assignor and the Town have provided Lessor with a true, correct and complete copy of the Fire Services Agreement and the 2019 MOC, that there is no outstanding default under the Fire Services Contract and the 2019 MOC, and that Assignor's interest under the Fire Services Contract and the 2019 MOC is not subject to any claim, set-off, lien or encumbrance of any nature. Assignor shall not further pledge, transfer, mortgage or otherwise encumber or assign its interest in the Fire Services Contract and the 2019 MOC.

4. Assignor covenants and agrees with Lessor that Assignor will (a) fulfill, perform and observe each and every condition and covenant of Assignor contained in the Fire Services Contract and the 2019 MOC, (b) give immediate notice to Lessor of any default by the Town under the Fire Services Contract, and (c) enforce the performance and observance of each and every covenant and condition to be performed or observed by the Town under the Fire Services Contract.

5. Assignor further covenants and agrees with Lessor that Assignor will not, without the prior written consent of Lessor, (a) modify or amend the terms of the Fire Services Contract and the 2019 MOC or (b) waive or release the performance of any obligation to be performed by the Town under the terms of the Fire Services Contract and the 2019 MOC.

6. Unless and until Assignor shall default in the performance or observance of any of the Secured Obligations, Assignor shall be entitled to enjoy and enforce all of its rights under the Fire Services Contract and the 2019 MOC, subject to the terms of this Assignment.

7. If Assignor shall default in the performance or observance of any of the Secured Obligations, Lessor, after having given written notice to the Town, shall be entitled, at Lessor's option and in Lessor's sole discretion, from and after such notice, to enjoy and enforce all of the rights of Assignor under the Fire Services Contract and the 2019 MOC, and, if Lessor chooses to exercise such option, Lessor shall be entitled to receive the benefit of all Assignor's right, title and interest in and under the Fire Services Contract and the 2019 MOC that arise from and after the date of Lessor's notice to the Town. Unless and until Lessor gives notice to the Town of Lessor's intention to succeed to the rights of Assignor, Lessor shall not be entitled to the benefit of Assignor's rights and interests in and under the Fire Services Contract and the 2019 MOC.

8. Lessor shall have the right, but not the duty, to take, in its name or in the name of Assignor, such action as Lessor may at any time or from time to time determine to be necessary or desirable to cure any default under the Fire Services Contract. Assignor appoints and empowers Lessor as its true attorney-in-fact and authorizes and empowers Lessor, at its option, to exercise any and all of the rights, powers and privileges conferred by the Fire Services Contract and the 2019 MOC in as full and ample manner as Assignor is or may be authorized and empowered to exercise the same. Assignor empowers Lessor, as its attorney-in-fact, as follows: (a) to use any funds of Assignor, including any funds which may remain unadvanced under the Secured Obligations, for the purpose of completing the Improvements in accordance with the final plans, specifications, blueprints or drawings prepared by or used in connection with the construction of the Improvements (the "Construction Documents"); (b) to make such additions, changes, and corrections to the Construction Documents as shall be necessary or desirable to complete the Improvements; (c) to employ such contractors, subcontractors, agents, architects, engineers, and inspectors as shall be required for such purposes; (d) to pay, settle or compromise all existing bills and claims which may be liens against the Leased Property, or as may be necessary or desirable in the sole discretion of Lessor for the completion of the Improvements or for clearance of title; (e) to take over and use all or any part of the labor, materials, supplies and equipment contracted for, or owned by, or under the control of, Assignor; (f) to execute all applications and certificates in the name of Assignor which may be required by the Fire Services Contract or any of the Construction Documents; (g) to prosecute and defend all actions or proceedings in connection with the Leased Property or the construction of the Improvements and take such action and require such performance as Lessor shall deem necessary under any performance or payment bond; and (h) to do any and every act with respect to construction or completion of the Improvements which Assignor might do in its own behalf, including execution, acknowledgment and delivery of all instruments, documents and papers in the name of Assignor as may be necessary or desirable in the sole discretion of Lessor; provided, however, nothing herein contained shall be deemed to impose upon Lessor any liability for the performance of any obligation of Assignor under the Fire Services Contract and the 2019 MOC. The rights of Lessor under this Assignment shall be operative, at the option of Lessor, from and after the time of any event of default by Assignor under any of the provisions of the Secured Obligations or under the documents or instruments executed in connection therewith.

9. In the event of the acquisition of the leasehold title to the Leased Property by Lessor or another purchaser pursuant to a lease termination or sale and termination under the power of sale contained in Lessor's Sublease Agreement and Municipal Lease and Option Agreement which Assignor executed in connection with the Secured Obligations, or otherwise, all right, title and interest of Assignor in, to and under the Fire Services Contract shall pass to the purchaser or to Lessor, as the case may be, and Lessor is irrevocably appointed by Assignor, as attorney-in-fact for Assignor, to assign such Fire Services Contract and 2019 MOC to any such purchaser, without accounting to Assignor in any manner whatsoever. Such power of attorney shall be deemed to be a power coupled with an interest, shall be irrevocable, and shall survive the disability of Assignor. Lessor shall incur no liability if any action taken by it, or on its behalf, in good faith, pursuant to this provision, shall prove to be in whole or in part inadequate, ineffective or invalid, and Assignor agrees to indemnify and hold Lessor harmless from and

against any loss, cost, liability or expense, including reasonable attorney's fees incurred in connection with any such act or actions by Lessor.

10. Assignor shall observe, perform and discharge, duly and punctually, any and all the obligations, terms, covenants, conditions and warranties of Assignor under the Fire Services Contract and the 2019 MOC and shall give prompt written notice to Lessor of any failure on the part of Assignor to observe, perform and discharge same.

[See Succeeding Pages for Signatures and Acknowledgments]

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.

ASSIGNOR:

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 _____, 2019.

Notary Public

Notary's printed or typed name: _____

My commission expires: _____

(AFFIX NOTARY SEAL)

ASSIGNOR:

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 _____, 2019.

Notary Public

Notary's printed or typed name: _____

My commission expires: _____

(AFFIX NOTARY SEAL)

LESSOR:

HOMETRUST BANK

BY: _____
Senior Vice President

ATTEST:

Secretary

NORTH CAROLINA, BUNCOMBE 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 HOMETRUST BANK a North Carolina banking corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its Senior Vice President, and attested by (him) (her) as its Secretary.

Witness my hand and official stamp or seal, this ____ day of _____, 2019.

Notary Public

Notary's printed or typed name: _____

My commission expires: _____

(AFFIX NOTARY SEAL)

CONSENT OF TOWN

The Town acknowledges receipt of a copy of the foregoing Assignment and agrees to look solely to Assignor, its successors and assigns, for the performance of Assignor's obligations under the Fire Services Contract and the 2019 MOC.

Notwithstanding any other provisions contained in the Fire Services Contract and the 2019 MOC, the Town consents to the foregoing Assignment, and the Town agrees, upon notice from Lessor after default by Assignor, to complete the Town's obligations otherwise due Assignor in favor of Lessor in accordance with the Fire Services Contract and the 2019 MOC.

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 _____, 2019.

Notary Public

Notary's printed or typed name: _____

My commission expires: _____

(AFFIX NOTARY SEAL)

EXHIBIT A

LEGAL DESCRIPTION

All that certain lot or parcel of land located and being on the West side of Dogwood Trail in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina, and bounded as follows:

BEGINNING at a concrete monument located in the West margin of the right of way of Dogwood Trail, the said monument also being located 654.53 feet North of the point of intersection of the West margin of the right of way of Dogwood Trail with the North margin of the right of way of U.S. Highway 158, said beginning point being also located at the intersection of the North boundary of the Bishop Vincent S. Waters parcel of land with the West margin of the right of way of Dogwood Trail; thence from the beginning point South 80 deg. 53 min. 00 sec. West 200 feet to an iron pipe or other marker; thence cornering North 10 deg. 07 min. 00 sec. West 150 feet to an iron pipe or other marker located and being in the South boundary of the lands of Kitty Hawk Land Company; thence cornering North 80 deg. 53 min. 00 sec. East 200 feet to the West margin of the right of way of Dogwood Trail; thence cornering and along the West margin of the right of way of Dogwood Trail South 10 deg. 07 min. 00 sec. East 150 feet to the point of beginning.

The same being the Eastern most 200 feet of those certain lands as shown on a map or plat entitled "Survey for Kitty Hawk Land Company of property to be given to Town of Southern Shores, NC," by Southern Surveying and Land Planning, dated January 14, 1986 and recorded in Plat Cabinet C, Slide 1E, Dare County Registry.

TOGETHER WITH AND SUBJECT TO those Deeds of Easement exchanged between Fire Service Real Estate, Inc., as the owner of the property herein described, and the Town of Southern Shores, as the owner of the property lying to the west of the property herein described and having an address of 27 Pintail Trail, Southern Shores, NC, for access, parking and other uses of those adjoining properties, which Deeds of Easement are recorded in Book ___, Page ___ and Book ___, Page ___ in the Dare County, North Carolina Registry.

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 _____, 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 ____, 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 Bok 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 Contact, 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 Bok 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

(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 _____, 20____, (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 ____, 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 Bok 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, _____, 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)

Redlined Comparison – 2018 vs 2019 Contract

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 _____, ~~20~~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 ~~an~~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

Redlined Comparison – 2018 vs 2019 Contract

WHEREAS, ~~it is the desire~~ 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 ~~to now enter~~ entered into a new continuing contract~~7~~, 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~~7~~; and

WHEREAS, the Parties entered into and recorded a Memorandum of Contract dated November 7, 2018 and recorded in Bok 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 Contact, 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,

Redlined Comparison – 2018 vs 2019 Contract

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

Redlined Comparison – 2018 vs 2019 Contract

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

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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,

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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,

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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

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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:

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(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

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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).

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- (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. ~~This subsection 16(a) shall not apply to the Event of Termination described in Section 15(f) above.~~
- (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, ~~except for Section 15(d),~~ 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

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(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).

~~(c) This Section 17 shall not apply to the Event of Termination described in Section 15(d) above.~~

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**~~-This;~~ **FINANCING PROVISIONS-**

(a) Effective as of the Effective Date, the Contract replaces and supersedes all previous contracts entered into between the Parties ~~described in this Contract~~, 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.

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(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 Bok 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.

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(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

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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]

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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

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**EXHIBIT A
APPROVED FORM OF MEMORANDUM OF CONTRACT**

(See attached)

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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 ~~CONTRACT~~AMENDED AND RESTATED CONTRACT (the "Memorandum of Amended and Restated Contract"), dated _____, 20____, (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~~

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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 ~~have~~ entered into a ~~Fire Services Contract (the "Contract") dated as of the new continuing contract, dated November~~ 2018 (the "Original Contract Date, with a term beginning"), effective July 1, 2019 (the "Effective Date"), and 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 Bok 2273, Page 371, Dare County Registry (the "2018 Memorandum of Contract"); and

WHEREAS, the Parties now desire to ~~provide constructive notice of the existence of the terms, provisions, conditions, restrictions, rights and responsibilities contained in the Contract with respect to the Real Property~~ 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

Redlined Comparison – 2018 vs 2019 Contract

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

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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,

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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

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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. ~~This subsection 16(a) shall not apply to the Event of Termination described in Section 15(f) above.~~
- (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, ~~except for Section 15(d),~~ 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

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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).

~~(c)~~ ~~This~~

6. Section 17 shall 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 ~~apply~~ limited to the ~~Event of Termination described~~ 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 Bok 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

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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 15(d)-above 17(a) of the Contract.

6(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.

~~7. Prior Memorandum Superseded. This Memorandum replaces and supersedes the Memorandum of Agreement between FSRE and the Town recorded in Book 1793, Page 146, Dare County Registry.~~

(continued on the following page)

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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)

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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)

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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)

Town of Southern Shores, NC

PROPERTY CONDITIONS ASSESSMENT REPORT



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EXECUTIVE SUMMARY

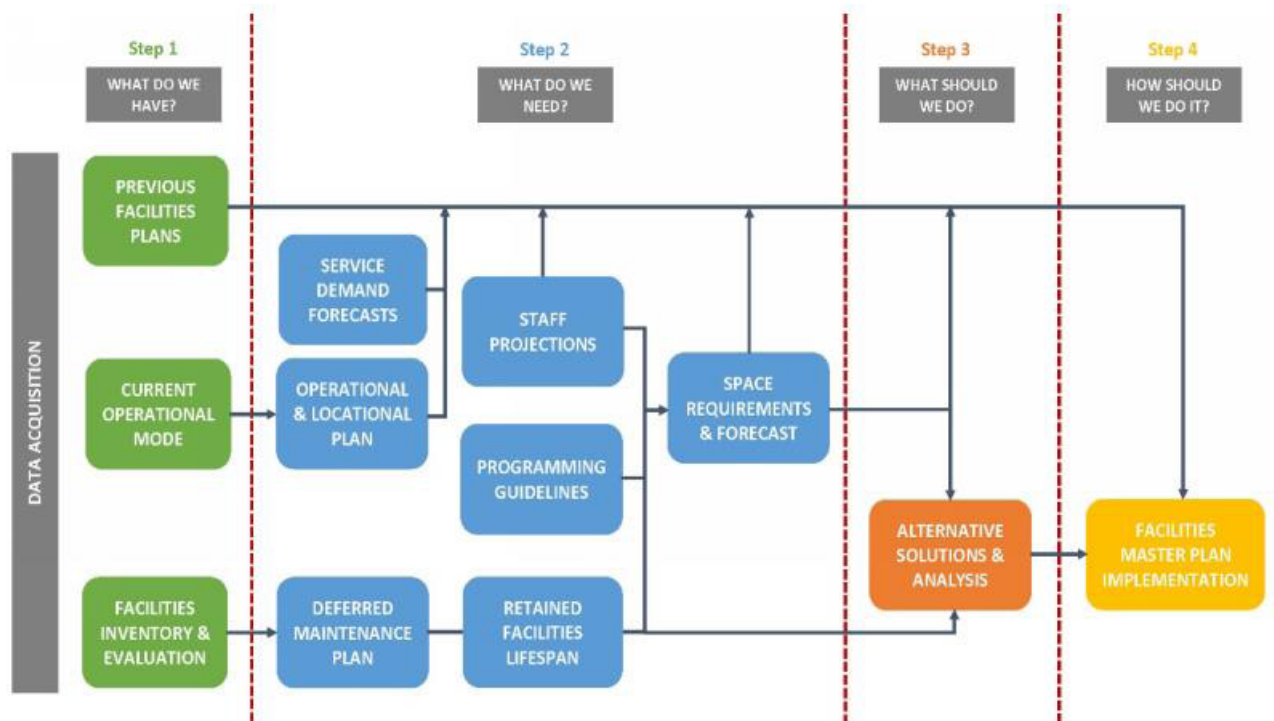
Purpose and Objectives

The focus of this document is to assist the Town of Southern Shores in determining the current and future needs of their existing Town Hall / Police Department / Public Meeting facilities and Public Works/Maintenance facility, located on North Virginia Dare Trail and Pintail Trail, respectively. The purpose of this assessment is to evaluate the existing conditions of five (5) existing facilities, including site evaluation, utilizing the following parameters:

- Site Analysis, including:
 - Access & Circulation
 - Parking
 - Wayfinding & Signage
- Architectural Analysis, including:
 - Program Functionality
 - Interior Circulation & Access
 - ADA / Accessibility
 - Egress & Life Safety
 - Construction Details
 - Materials & Finishes
- Structural Systems Analysis
- Plumbing Systems Analysis
- HVAC Systems Analysis
- Electrical Systems Analysis

As there are many complexities relative to solving the numerous issues at hand, our planning process was geared towards answering four fundamental, common-sense questions:

- 1. What do we have?**
- 2. What do we need?**
- 3. What should we do?**
- 4. How should we do it?**



The principal goals of this assessment are to:

- Investigate the existing viability of each facility for continued use;
- Determine the life cycle remaining in each Town-owned facility;
- Establish an inventory of current needs to create well-organized space for daily operations;
- Establish a long-term plan for future needs, including expansion and/or relocation, if necessary, and
- Create estimates of probable costs required to implement these findings.

The evaluations contained herein are based on visual observations made during on-site field visits to each facility. These observations are noted and described on the Property Conditions Assessments, found in the Current Buildings Section of this document. Although certain logical assumptions may be made, it is important to note that these methods may not be sufficient to adequately identify all concealed conditions that may exist. It is imperative that, as each recommendation is implemented, a thorough investigation be included as a part of the scope of work for each individual facility.

Ultimately, the overall goal for this assessment is to be used as a long-range planning tool for the Town of Southern Shores.

Summary of Findings

On September 26th, 2018, a team from Oakley Collier Architects, PA (OCA) along with County officials / staff conducted a walk-through Facility Conditions Assessment of four (4) buildings located at 5375 N. Virginia Dare Trail (6 Skyline Drive) in Southern Shores, NC and one (1) building located at 27 Pintail Trail in Kitty Hawk, NC. The facilities reviewed were all owned by the Town of Southern Shores and are as follows:

Town Hall Building

5375 N. Virginia Dare Trail (6 Skyline Drive)
Southern Shores, NC 27949

Kern P. Pitts Building

5377 N. Virginia Dare Trail (5 Skyline Drive)
Southern Shores, NC 27949

Police Station Building

5375 N. Virginia Dare Trail
Southern Shores, NC 27949

Police Training & Storage

5375 N. Virginia Dare Trail
Southern Shores, NC 27949

Public Works / Maintenance Building

27 Pintail Trail
Kitty Hawk, NC 27949

Present during the facility walk-throughs were representatives from each department who were familiar with the building systems and maintenance that has occurred throughout the years. The purpose of the walk-through was to assess the physical condition of the facilities, as well as functionality needs and department growth needs.

Facility Average Age & Life Expectancy

The facilities range in age from approximately 5 years of age to over 30 years old, based on data and information provided to this review team. All of the facilities are owned by the Town; four (4) of the facilities – Town Hall, Police Department, Police Training Building, and the Pitts Building – are all located on a single piece of property on Virginia Dare Drive. The Public Works facility is located a few miles (1.4 miles) away on Pintail Trail, behind the Southern Shores Fire Department. While routine maintenance has been conducted on the buildings throughout the years, most of the facilities have some repair / upgrades needs.

The life expectancy of each facility and its major components should be taken into consideration when analyzing the overall costs of minor repair / deferred maintenance upgrades versus the costs of major renovations, additions or new construction. The chart below identifies the age of the facility and the expected 'end of life' for its major building components (ie, structural systems, roofing systems, electrical, plumbing, & HVAC systems, interior finishes, exterior building skins, etc...)

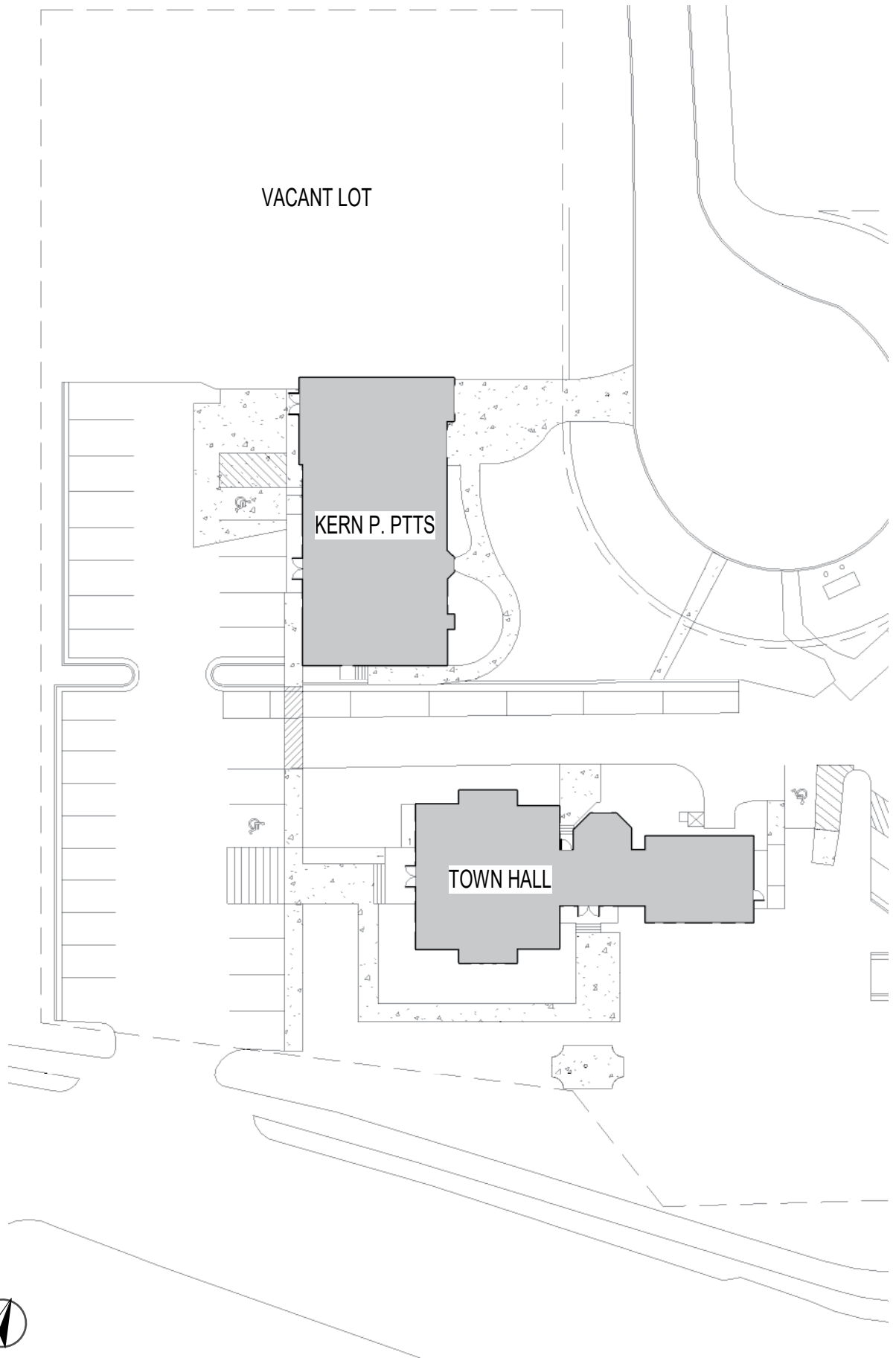


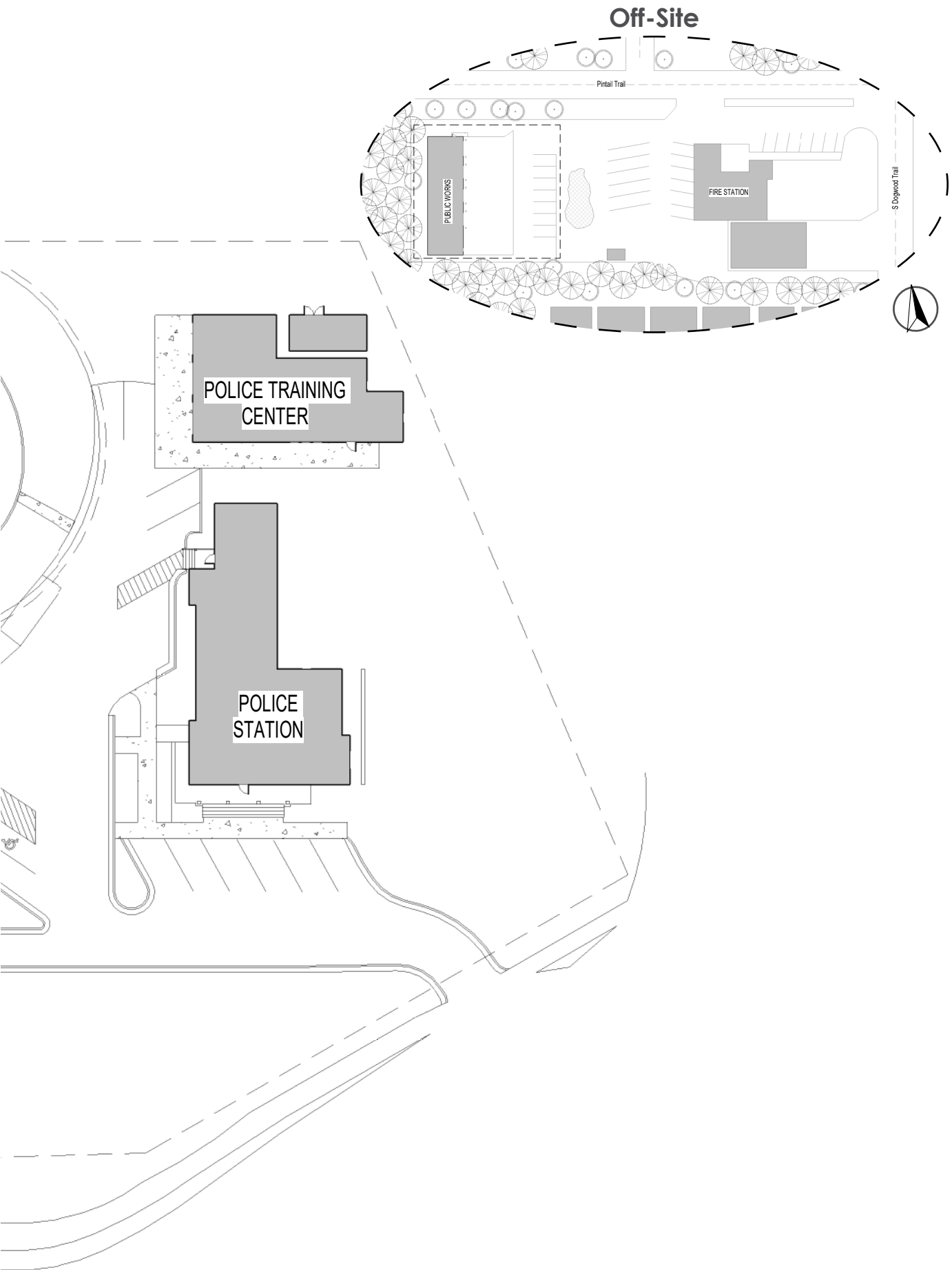
Life expectancy of a building can vary greatly depending on environmental conditions and preventative maintenance. The chart above identifies the age of each facility (*grey bar*), along with a predicted life expectancy that is based on typical building materials, as projected by the Building Owners Management Association (BOMA) for average environmental conditions and maintenance (*blue bar*). The orange bar represents a reduced life expectancy, which is more realistic, due to the harsh environmental conditions experienced in coastal construction, as identified by FEMA guidelines (see “Coastal Construction Manual” in the Appendix section of this report). Based on the more severe coastal environment of Dare County as well as the residential construction nature of the facilities, as much as a 25% cost reduction in life cycle should be expected. As evidenced in the chart above, 1 of the 5 facilities reviewed have either exceeded or are approaching their full life cycle. Additionally, several of these facilities lack the capacity and functionality to efficiently and effectively support modern day Town operations and service to the citizens of Southern Shores.

SITE CONDITIONS

VICINITY PLAN

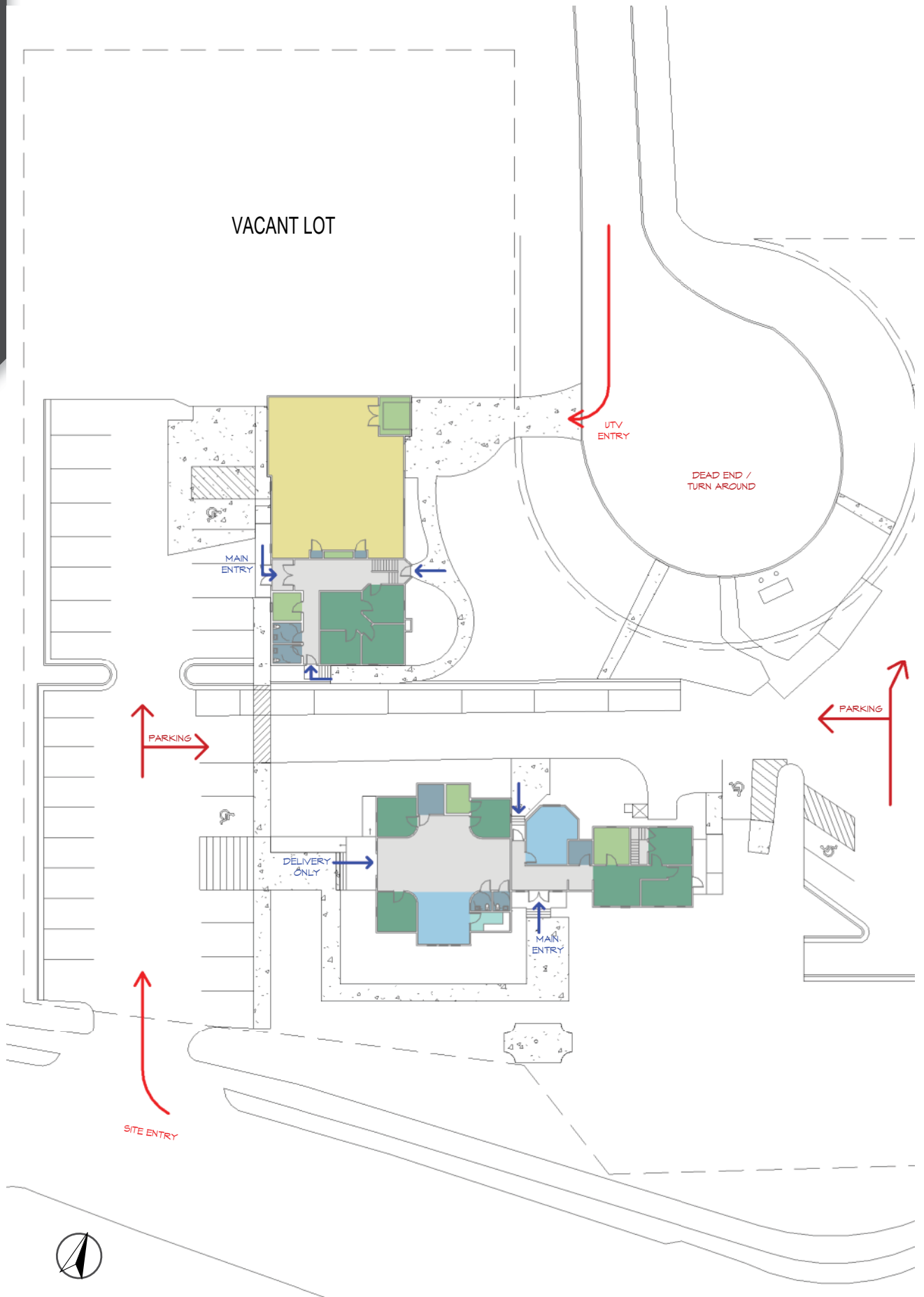
Site





SITE CIRCULATION

Site



Existing

Existing circulation of the site is off a one way street. Parking is extremely limited. The site elevation change creates a conflict with existing the site with ease.

PROGRAM

HOA

- (1) Conference
- (1) Kitchen Space
- (2) Office
- (0) Storage
- (1) Toilets

PLANNING DEPT.

- (1) Conference
- (1) Kitchen Space
- (3) Office
- (1) Reception
- (2- L1/L2) Storage
- (1) Toilets

TOWN HALL

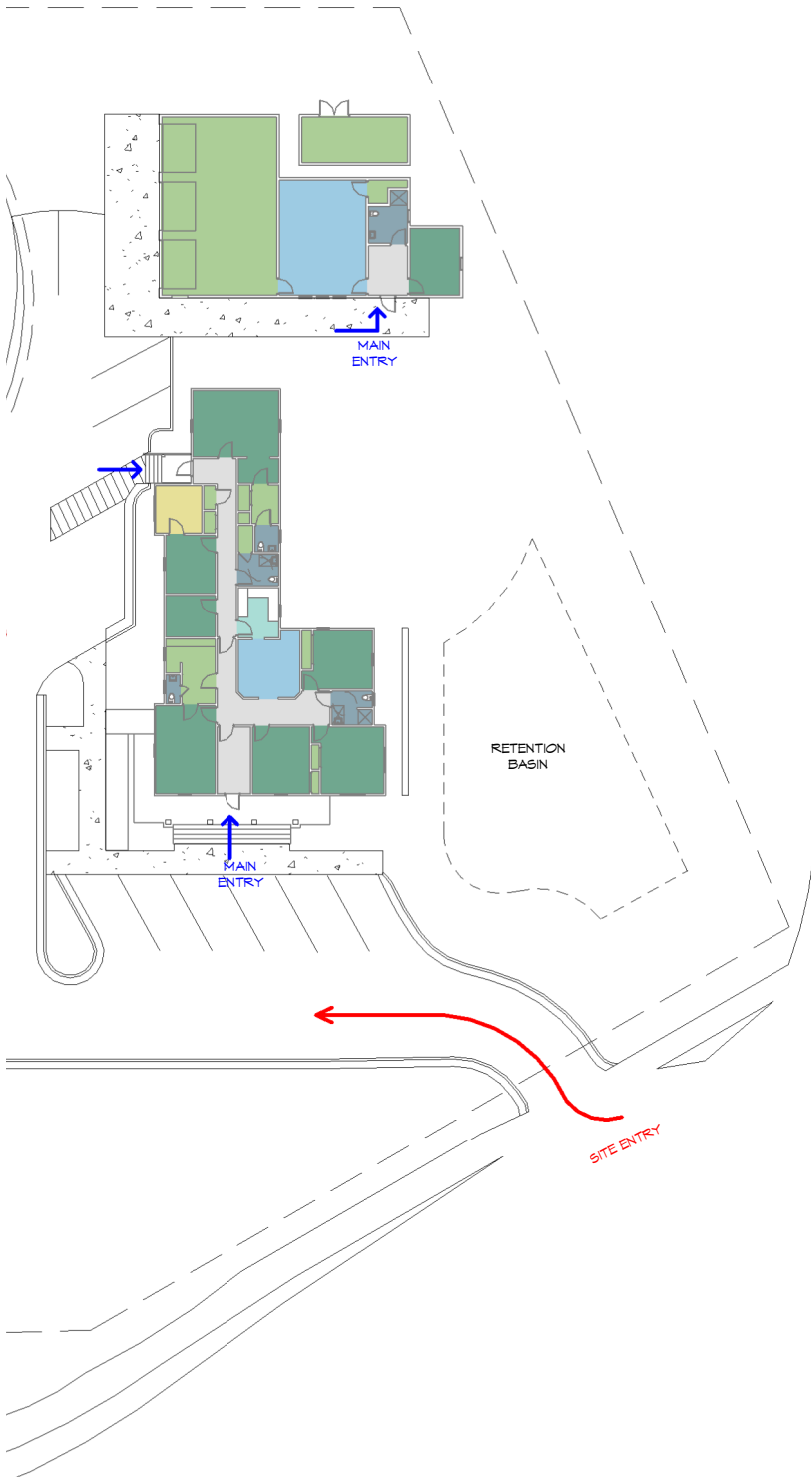
- (1- L2) Conference
- (1- L2) Kitchen Space
- (1) Assembly Area
- (3) Office
- (1) Reception
- (1) Copy/Print
- (1) Storage
- (2- L1/L2) Toilets

POLICE DEPT.

- (2) Conference
- (1) Training
- (1) Kitchen Space
- (1) Lab - Evidence
- (8) Office
- (1) Reception
- (4) Storage
- (3) Garage
- (10+) Officer Parking
- (5) Toilet/ Shower

COLOR LEGEND

	BUILDING SUPPORT
	CIRCULATION
	CONFERENCE
	KITCHEN
	LAB/ASSEMBLY
	OFFICE
	STORAGE



PROJECT BUDGET SUMMARY

Properties Condition Assessment

PLANNING COST ANALYSIS	
Option One	
Scope of Work	Extended
<i>Town Hall- Renovate & Addition</i>	\$609,585
<i>Pitts Building- Code Deficiencies</i>	\$197,350
<i>Police Station- Renovate & Addition</i>	\$843,510
<i>Police Training- Code Deficiencies</i>	\$20,500
<i>General Sitework</i>	\$200,000
Construction + Soft Costs Total	\$2,141,297

PLANNING COST ANALYSIS	
Option Two	
Scope of Work	Extended
<i>Demo</i>	\$200,000
<i>New Town Hall</i>	\$2,400,000
<i>Police Station- Renovate & Addition</i>	\$1,443,510
<i>Police Training- Code Deficiencies</i>	\$20,500
<i>General Sitework</i>	\$400,000
Construction + Soft Costs Total	\$5,109,059

PLANNING COST ANALYSIS	
Option Three	
Scope of Work	Extended
<i>Demo</i>	\$200,000
<i>New Town Hall/Police Station</i>	\$4,650,000
<i>Police Training- Code Deficiencies</i>	\$20,500
<i>General Sitework</i>	\$400,000
Construction + Soft Costs Total	\$5,917,190

PLANNING COST ANALYSIS	
Public Works	
Scope of Work	Extended
<i>Public Works- Renovate & Addition</i>	\$374,775
<i>General Sitework</i>	\$50,000
Construction + Soft Costs Total	\$476,895

To view the document in full please visit the link below.

<https://www.dropbox.com/s/h5x9ajce19wdi1w/18033%20-%20Southern%20Shores%20FCA%20-%2002.19.2019.pdf?dl=0>



Kenneth Willson
Program Manager
Aptim Coastal Planning & Engineering
of North Carolina, Inc.

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Wilmington, North Carolina
Tel: +1 910-791-9494
Kenneth.Willson@aptim.com

December 21, 2018

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

**Subject: Town of Southern Shores, North Carolina – Vulnerability Assessment & Beach
Management Plan**

Dear Mr. Rascoe:

Two (2) hardcopies and two (2) electronic copies of *the Town of Southern Shores, North Carolina Vulnerability Assessment & Beach Management Plan* are enclosed. The Vulnerability Assessment focusses on potential damage associated with a storm having similar characteristics as Hurricane Isabel, which impacted the Outer Banks in 2003. The Beach Management Plan provides a long-term vision for the Town of Southern Shores to sustain the beaches that support a significant portion of their local economy and maintains the tax base of the Town. The hardcopies and electronic copies include both the main report along with Appendices associated specifically with the vulnerability analysis.

The final version of the report addresses the comments we received from you on the draft document, which was submitted on November 20, 2018. I am planning to present the conclusions and recommendations of this report to Council during their planning session scheduled for Tuesday February 26, 2019. The presentation will specifically lay out the three proposed options included in the report for Council consideration. Cost and schedules for each option are provided in the report and will be discussed during the presentation. If Council decides to pursue one of the options, the Town could then immediately begin coordination with Dare County by providing estimated costs for the preferred option.

Please call me if you have any questions.

Sincerely,
Aptim Coastal Planning & Engineering of North Carolina, Inc.

Kenneth Willson
Vice President

**TOWN OF SOUTHERN SHORES NORTH CAROLINA
VULNERABILITY ASSESSMENT
&
BEACH MANAGEMENT PLAN**



**SUBMITTED TO:
TOWN OF SOUTHERN SHORES**

**SUBMITTED BY:
APTIM COASTAL PLANNING & ENGINEERING OF NORTH CAROLINA, INC.**

December 2018

EXECUTIVE SUMMARY

The Town of Southern Shores authorized Aptim Coastal Planning & Engineering of North Carolina, Inc. (APTIM) to conduct a Vulnerability Assessment and develop a Beach Management Plan that can be used by the Town for future planning. The Vulnerability Assessment focusses on potential damage associated with a storm having similar characteristics as Hurricane Isabel, which impacted the Outer Banks in 2003. The Beach Management Plan provides a long-term vision for the Town of Southern Shores to sustain the beaches that support a significant portion of their local economy and maintains the tax base of the Town. In order to sustain the beaches, the Beach Management Plan aims to maintain the Town's oceanfront beach and dune to a configuration that 1) provides a reasonable level of storm damage reduction to public and private development, 2) mitigates long-term erosion that could threaten public and private development, recreational opportunities, and biological resources, and 3) maintains a healthy beach that supports valuable shorebird and sea turtle nesting habitat.

Furthermore, the Beach Management Plan aims to coordinate the efforts of Southern Shores with neighboring communities in Dare County to achieve cost savings where possible. The 2017 beach nourishment project undertaken through a cooperative effort on the part of Dare County, and the Towns of Duck, Southern Shores, Kitty Hawk, and Kill Devil Hills, was implemented in a way that maximized cost savings and cost sharing. In this regard, the Southern Shores Beach Management Plan has been developed in such a way to align with other regional actions to achieve cost-sharing and cost savings. Furthermore, by developing a management plan before the beach reaches a critically eroded state, the Town may be able to maintain a greater level of storm damage reduction.

In addition to providing a higher level of storm damage reduction, implementation of a beach management plan establishes eligibility for the Town to recoup sand losses from coastal storms through FEMA's Public Assistance Program. Typically, coastal communities are eligible for public assistance funds for their beaches through Category B and Category G of the Public Assistance Program authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act. While the Town is currently eligible for Category B assistance, this typically equates to a maximum of 6 cy/lf of sand to form temporary emergency dune structures, the purpose of which is to provide a minimal amount of protection until a more permanent solution is implemented. Through the implementation of the Beach Management Plan, the Town would be eligible for Category G funds, which allows for beaches to be considered eligible facilities under certain conditions. The options included in the Beach Management Plan were designed to meet these conditions, which may allow for reimbursement to replace sand lost from the beach as a result of a presidentially declared disaster.

Vulnerability Assessment

The vulnerability assessment employed the Storm Induced Beach Change Model (SBEACH). APTIM used the storm characteristics of Hurricane Isabel such as wave heights, wave period, water level, and duration to drive the model. Given this storm occurred over 15 years ago, APTIM simulated the storm using three (3) different sea level scenarios: 1) as it occurred in 2003; 2) the storm with water levels based on 15 years of sea level rise (2018 equivalent); and 3) the storm with 30 years of sea level rise from present day (2048 equivalent). Sea level rise rates were based on

the North Carolina Sea Level Rise Assessment Report (NC CRC, 2015). The SBEACH results informed the development of the Beach Management Plan with regards to what sections of the Town may be vulnerable to impacts from the design storm, and what amount of additional volume would be required to reduce that vulnerability.

Beach Management Plan

The results of the vulnerability analysis, as well as the beach assessment conducted by APTIM in February 2018, were used in the development of a beach management plan for the Town of Southern Shores. The Beach Management Plan is aimed at sustaining the oceanfront beach along the entirety of the Town of Southern Shores. The Town's approximately 3.7 miles of shoreline varies in regards to the height and width of the primary dune, the distance structures are set back from the vegetation, and the rates of volume change that occur from station to station. Therefore, efforts first focused on understanding which portions of the Town require additional beach fill to achieve the goals of the overall plan. Both long-term erosion rates and storm impacts were analyzed to identify portions of the shoreline where structures are presently, or in the near future, may be vulnerable to the effects of chronic erosion and episodic storm events.

The extent of the Town's shoreline recommended for consideration for future beach nourishment is the southern 15,500 feet of shoreline from Station -155+00 (located approximately 200 ft. south of 5th Ave.) to the southern Town boundary with Kitty Hawk (Station 0+00). The area recommended for fill placement is more specifically described in terms of three (3) sub-sections. The "Main Placement Area" extends from Station -150+00 (located near 3rd Ave.) south to Station -50+00 (located approximately 450 feet south of Chicahawk Trl.). This area was identified based on the evaluation of the SBEACH storm damage vulnerability analysis and the beach volume analysis. The second sub-section is referred to as the "Transition Area". This area extends 5,000 feet from Station -50+00 (located approximately 450 feet south of Chicahawk Trl.) south to the Town boundary with Kitty Hawk at Station 0+00. The third sub-section extends approximately 500 feet north of 3rd Ave. and is referred to as the "Taper".

Once the linear extent of the proposed project was determined, three (3) design volume options were developed, which were aimed at optimizing the extent of storm damage reduction. The design volume options were based on an analysis that concluded that for SBEACH Storm Scenarios 3, 11, and 14, the average volume contained in the "volume envelope" of those profiles not impacted by the storm was 846 cy/lf, 858 cy/lf, and 872 cy/lf, respectively. In calculating these averages, Station 0+00 was considered to be an outlier. Therefore, Station 0+00 was not included in the calculation of average volumes. The average volumes within the "volume envelope" were used as a proxy for the targeted volume recommended to be present within the volume envelope on any given profile, to provide a reasonable level of storm damage reduction for each of the (3) three design volume options.

Options 1 and 2 are based on the results of Scenario 3, and therefore, are focused on providing a reasonable level of storm damage reduction based on a design storm similar to Hurricane Isabel with 2018 sea levels. This scenario also assumed the storm impacted the coast during a similar period in the lunar tidal cycle as when Hurricane Isabel impacted Dare County. Option 3 is based on the results of Scenario 11, and therefore, is focused on providing a reasonable level of storm damage reduction based on a design storm similar to Hurricane Isabel with 2048 sea levels.

Scenario 11 similarly assumed the storm impacted the coast during a similar period in the lunar tidal cycle as when Hurricane Isabel impacted Dare County. The 2048 sea levels are based on the RCP 8.5 greenhouse gas projections from the IPCC 5th Assessment Report (AR5). As a point of interest, the water levels in Scenario 11 were similar to water levels in Scenario 4. Scenario 4 was a design storm similar to Hurricane Isabel with 2018 sea levels; however in contrast to Scenario 3, Scenario 4 was formulated to impact the Town during spring tide as opposed to the actual period in the lunar tidal cycle that Hurricane Isabel impacted Dare County in September 2003.

Option 1 assumes a targeted volume density of 846 cy/lf to be maintained along the Southern Shores oceanfront based on the Scenario 3 analysis. The average density measured along the Town's oceanfront in the "Main Placement Area", which extends from Station -150+00 (located near 3rd Ave.) to -50+00 (located approximately 450 feet south of Chicahawk Trl.), was 801 cy/lf at the time of the December 2017 survey. Therefore, the fill density recommended for this option in the Main Placement Area is 45 cy/lf. At a density of 45 cy/lf, the Main Placement Area fill would require approximately 450,000 cy of sand. Placement of sand is also recommended south of the Main Placement Area to form a contiguous project with the Kitty Hawk/South Southern Shores project constructed in 2017 and scheduled for renourishment in 2022. This area is referred to as the Transition Area. Option 1 includes beach fill at 30 cy/lf between Stations -50+00 and 0+00, for an additional volume of 150,000 cy. Assuming a fill density at the northern end of the Main Placement Area of 45 cy/lf., a 500 ft. long taper would require approximately 11,250 cy, bringing the total design volume of Option 1 to 611,250 cy. Typically, beach nourishment projects include a design volume, and an advanced fill volume, which is determined based on spreading losses and annual erosion losses projected to occur between nourishment intervals. For the Options presented in this report, a nourishment interval of 5 years was assumed. The advanced fill volume recommended for Option 1 is 54,400 cy, bringing the total volume for Option 1 to 665,650 cy.

Similar to Option 1, Option 2 assumes a targeted volume density of 846 cy/lf, to be maintained along the Southern Shores oceanfront based on the Scenario 3 analysis. Option 2 volumes were based on evaluating the average density measured along the Town's oceanfront along both the "Main Placement Area" and the "Transition Area", which was 818 cy/lf at the time of the December 2017 survey. This average excludes Station 0+00 as it is considered an outlier. The deficiency in volume with an average of 818 cy/lf., and a target volume of 846 cy/lf., is 28 cy/lf. The fill density recommended for both the Main Placement Area and the Transition Area for Option 2 is 30 cy/lf. The number was increased from 28 cy/lf to 30 cy/lf to stay consistent with average fill densities proposed along Kitty Hawk, which in part was based on constructability limitations for the types of dredges anticipated to be used to construct the project. At a density of 30 cy/lf, the 15,000 foot long fill area would require approximately 450,000 cy of sand. Assuming a fill density at the northern end of the fill area of 30 cy/lf., a 500 foot-long taper would require approximately 7,500 cy, bringing the total design volume of Option 2 to 457,500 cy. The advanced fill volume recommended for Option 2 is 34,800 cy, bringing the total volume for Option 2 to 492,300 cy.

Option 3 assumes a targeted volume density of 858 cy/lf, to be maintained along the Southern Shores oceanfront based on the Scenario 11 analysis. As previously stated, the average density measured along the Town's oceanfront in the "Main Placement Area", which extends from Station -150+00 (located near 3rd Ave.) to -50+00 (located approximately 450 feet south of Chicahawk

Trl.), was 801 cy/lf at the time of the December 2017 survey. Therefore, the fill density recommended for Option 3 in the Main Placement Area is 57 cy/lf. At a density of 57 cy/lf, the Main Placement Area fill would require approximately 570,000 cy of sand. Similar to Option 1, Option 3 recommends placement of 30 cy/lf along the 5,000 foot-long Transition Area to form a contiguous project with Kitty Hawk, for an additional volume of 150,000 cy. Assuming a fill density at the northern end of the Main Placement Area of 57 cy/lf., a 500 ft. long taper would require approximately 14,250 cy, bringing the total design volume of Option 3 to 734,250 cy. The advanced fill volume recommended for Option 3 is 68,800 cy, bringing the total volume for Option 3 to 803,050 cy.

The scope of the development of this beach management plan was to determine a minimum cross sectional volume needed to provide an acceptable level of storm damage reduction. During the design and permitting of a proposed project, the design engineer will establish design parameters for the proposed beach fill that will include a dune fronted by a beach berm. Design parameters for both the dune and berm will include crest elevations, crest widths, and slopes that would provide the recommended cross-sectional volume. The detailed design process will also include an evaluation of ways to optimize the design of the fill that would achieve the design goals for the lowest cost.

Executive Summary Table 1 shows the design fill volume, advanced fill volume, taper fill volume, and total volume for each of the three options.

Executive Summary Table 1. Optional Design Summary

Design	Design Volume ⁽¹⁾	Transition Area Volume ⁽²⁾	Advanced Fill Volume ⁽³⁾	Taper Volume ⁽⁴⁾	Total Volume	Avg. Fill Density ⁽⁵⁾
Option 1	450,000	150,000	54,400	11,250	665,650	40
Option 2	300,000	150,000	34,800	7,500	492,300	30
Option 3	570,000	150,000	68,800	14,250	803,050	48

⁽¹⁾Volume (CY) to construct the Main Placement Area excluding tapers, transition fill, and advanced fill (Stations -150+00 to -50+00).

⁽²⁾Volume (CY) to construct the Transition Area (Stations -50+00 to 0+00).

⁽³⁾Volume (CY) included to account for diffusion losses and background erosion. Re-nourishment interval assumed to be 5 years.

⁽⁴⁾Volume (CY) to construct a 500 foot taper on the northern end of the beach fill (Stations -155+00 to -150+00).

⁽⁵⁾Total Volume included in the Design Volume and Transition Area divided by 15,000 feet.

Estimated Schedule

A project schedule was developed to best coordinate the efforts of Southern Shores with neighboring communities in Dare County to achieve cost savings where possible. The 2017 beach nourishment projects undertaken through a cooperative effort on the part of Dare County, and the Towns of Duck, Kitty Hawk, and Kill Devil Hills, were designed with a 5-year maintenance cycle. The first maintenance event is scheduled for summer of 2022. The project schedule included in the Beach Management Plan was developed to align construction of a beach nourishment project for the Town of Southern Shores with the maintenance work scheduled for 2022.

The construction of a beach nourishment project for the Town of Southern Shores will require the completion of the following items:

- Financial Planning and Establishment of Revenue Streams
- Development/Refinement of Borrow Areas
- Final Design Work
- Environmental Documentation and Permitting (State and Federal)
- Obtaining Easements for Construction
- Development of Construction Plans and Specifications
- Solicitation of Construction Bids
- Awarding Construction Contract

The detailed project schedule included in the Beach Management Plan suggests that efforts associated with design and permitting the project should be initiated in February 2020 to allow for a 2022 construction timeframe. However, APTIM recommends that an updated beach profile survey be conducted in the Spring of 2019 to align with the annual beach profile surveys conducted by Duck, Kitty Hawk, and Kill Devil Hills. The reasons for this are discussed in the recommendations section of the report.

The overall schedule takes into consideration the time that was required to conduct similar tasks for the 2017 Multi-Town beach nourishment projects. APTIM consulted with state and federal agencies to re-calibrate the timeframe for permitting efforts. The majority of the items required to be completed in order to construct a project are items that can be coordinated and cost shared with other Dare County Towns.

Estimated Cost

Project cost estimates were developed for each of the three (3) options, to account for permitting/design, construction, pre-construction/construction administration, and environmental monitoring anticipated to be required during construction. The cost estimates also include a 10% contingency. Executive Summary Table 2 summarizes the associated costs for the three (3) options.

Executive Summary Table 2. Project Option Cost Estimates

Option	Volume (cy)	Permitting / Design Soft Cost	Construction Cost	Construction Soft Cost	Construction Env. Monitoring Costs	Contingency Cost (10%)	TOTAL COST
1	665,650	\$435,000	\$9,708,000	\$219,500.00	\$176,600.00	\$1,053,900	\$11,593,000
2	492,300	\$435,000	\$7,425,000	\$201,500.00	\$129,800.00	\$819,100	\$9,010,400
3	803,050	\$435,000	\$11,443,000	\$233,500.00	\$213,000.00	\$1,232,500	\$13,557,000

Recommendations

Based on the analysis and conclusions discussed in this report, APTIM is recommending the following:

1. **Determine Which Option To Pursue:** Given the information presented in this report, the Town of Southern Shores should first determine if it wishes to pursue any of the three beach fill options presented. If the Town determines that it wishes to pursue one of the three presented beach nourishment options, it must then decide which option provides the most cost effective approach. APTIM is prepared to support the Town with any of the three Options as a project we believe will achieve the Town's goals. More specifically, APTIM believes each option will maintain the oceanfront beach and dune to a configuration that 1) provides a reasonable level of storm damage reduction to public and private development, 2) mitigates long-term erosion that could threaten public and private development, recreational opportunities, and biological resources, and 3) maintains a healthy beach that supports valuable shorebird and sea turtle nesting habitat. The Town must determine which option is feasible given fiscal restraints.
2. **Begin Coordination with County and Neighboring Communities:** During the planning stages of the 2017 Multi-Town beach nourishment project, regular meetings were convened with Town and County representatives as well as the Town's Engineers and Financing Consultants. A similar meeting should be scheduled for the Spring of 2019 to begin the planning process for a potential 2022 project. During the meeting, the Towns and County should be provided updates on proposed volume and cost estimates, as well as a draft schedule of those efforts needed to be completed to go to construction in 2022. Discussions at this meeting should also focus on the need for additional sand sources for future projects. Furthermore, this meeting should aim to establish which Towns are planning to move forward with a 2022 project.
3. **Initiate Financial Planning:** A successful beach management program will require a stable revenue stream dedicated to the program. The Town of Southern Shores is in a favorable position to implement a beach management plan given the history of Dare County's willingness to partner with local communities on such programs. Furthermore, the opportunity to partner with neighboring local communities to cost share in some aspects of the project, has the potential to further reduce the Town's cost share to implement the overall program. Early and proper financial planning is vital to developing a revenue stream to support a beach management program. Other local communities in Dare County that have implemented similar programs, coordinated early on in the planning process with both Dare County and outside professional financial advisors. If the Town determines that it wishes to implement a beach management program, APTIM recommends the Town not only coordinate the initial plan with Dare County and its neighbors, but also seeks professional financial advice to properly budget and plan for the program.

4. **Continue Monitoring of the Beach Profiles:** As witnessed along the Town's southern shoreline between 2015 and 2017, the beach is a highly dynamic area. Sand movement due to storm events can cause considerable changes in the level of protection available by dunes and beach berms. For this reason, it is important to regularly monitor the beach profile. Based on observed trends and current beach densities, APTIM recommends that an updated beach profile survey be conducted in the Spring of 2019 to align with the annual beach profile surveys conducted by Duck, Kitty Hawk, and Kill Devil Hills.

The analysis detailed in this report is based on beach profile surveys conducted along the Town's oceanfront in December 2017. If the Town of Southern Shores decides to pursue one of the recommended options, conducting beach profile surveys in the Spring of 2019 will serve several purposes. First, the surveys will allow engineers to determine whether the measured positive volume change reported in the 2018 Beach Assessment Report is continuing, or if that trend was being influenced by the construction of the 2017 Multi-Town Project. If negative volume changes are measured, these updated profile data would allow us to re-evaluate volume estimates, which directly correlates to cost estimates. Furthermore, collection of survey data in 2019 would ensure that the necessary engineering analysis could be performed starting in early 2020 rather than having to wait until new data are collected in Spring 2020, which may result in a slide in the schedule.

Through the implementation of these recommendations, the Town of Southern Shores will be establishing a beach management plan specifically aimed at achieving the shoreline management goals of the Town. The adoption of this beach management plan will allow for long-term financial planning which is key to implementing a successful program. This type of long-term planning and active coordination with neighboring Towns will leverage cost saving opportunities realized through multi-town cooperation. Furthermore, the implementation of a beach management program now, before the beaches reach a critically eroded state, allows the Town to provide a greater level of storm damage reduction at a lower cost.



Town of Southern Shores

Shoreline Protection Project and
Financial Planning Discussion

February 26, 2019

Contents

- General Introduction
- Shoreline Protection Financial Planning
- Financing Modes Available
- Services We Provide
- Conclusion/Questions

General Introduction

- Southern Shores recognizes the need for financial planning with particular emphasis on the beach as the primary economic driver
- Town has identified need for nourishment of shoreline and beginning to review alternatives for funding
- Current focus on most cost effective means to meet the need, including methods to raise estimated nourishment costs
- N.C. Statutes provide limited means to finance shoreline protection and likely necessitating partnership with the Town and Dare County
- We are here to discuss the role of financial planning in moving forward with shoreline protection and the long term role it plays in town finances

General Introduction

What is a financial advisor?

- Independent firm that provides advice related to financial management and raising capital
- Registered with the SEC & MSRB

Who is DEC Associates and firm professionals?

- N.C. based advisor, ranked number one by volume for the over 14 years of firm existence for N.C. local government clients
- Provides advice with respect to debt, pay-go and other sources for capital
- Provides financial advice related to financial planning and execution of the plans
- Financial policy development

Shoreline Protection Financial Planning

Importance of financial planning

- Provides a road map
- Sets policies and achievement objectives
- Measures achievement
- Provides for annual review and can change as needed
- Provides for greater financial alternatives
- Provides tool to match needs with priorities

Creation of town-wide financial policies

- Financial metrics – fund balance levels, etc.
- Investment policies
- Debt policies
- Appropriate accounting mode for beach costs

Shoreline Protection Financial Planning

Shoreline protection creates upfront capital investment and operating cost to meet beach objectives

- Borrowing of the initial beach nourishment cost is customary
- Potential for partnership with the County
- Debt service and operating cost for the beach likely would be best accounted for by a separate Beach Fund
- Planning will consume approximately two years potentially

Long term beach maintenance is a continuing cost and process into the future

- Continue to accumulate beach fund future maintenance cost
- Plan for future maintenance capital cost and methods to fund

Financing Modes Available

Pay-Go

Borrowed

- General Obligation Bonds
 - Voter referendum required
 - Authorization Lasts for 7 Years
 - Public hearing process to authorize vote
 - Pledges unlimited tax levy to pay debt service
- Installment Purchase Financing – G.S. 160A-20
 - Voter Referendum not required
 - Requires public hearing
 - Requires pledge of real property for collateral
 - Requires increased time to due to real property pledge
 - Cost of property appraisals and other cost

Financing Modes Available

Borrowed (continued)

- Special Assessment Bonds – G.S. 160A-220
 - Special Assessment would be petitioned by 66% of property to be assessed – a voluntary process
 - Multiple public hearings
 - Able to be blended with another type of borrowing – not likely singular method
 - Requires pledge of property assessment
- Special Obligation Bonds (SOBs) – G.S. 159I-30 – Generally preferred method
 - No voter referendum required
 - State law requires use of municipal service district (MSD)
 - MSD can be formed and levy (or not) a tax inside the district
 - Requires pledge of taxes and/or fees not levied by the town
 - May need partnership with the County

Financing Modes Available

Unique N.C. elements of SOBs

- Selected revenues are identified as source of credit pledge
 - Can only pledge selected tax revenues that are not levied by the Town
 - Any other lawful source of non-tax revenue can be pledged – examples
 - Potential use of inter local agreements
- Revenues for Debt Repayment
 - Pledge of selected Town tax and other revenues and can remain in the General Fund budget as customary
 - Actual revenue sources for debt service could include portion of Occupancy Tax, Town wide property taxes, municipal service district taxes, others?

Services We Provide

- DEC Associates Inc would provide a full "Soup to Nuts" suite of services for the entire shoreline protection project timeline
 - Advise on structure, timing and raising of funds to create the revenue streams to fund the project
 - Creation of funding model projecting revenues and expenditures needed to fund the project and its continual maintenance
 - Creation of calendars through the planning and issuance phases to keep the project on timing
 - Advise on the financial structure and credit package needed to attract banks and favorable interest rates
 - Complete LGC support including presentations, data creation and application process
 - Work in concert with the County and other neighboring Towns to achieve lowest cost of project through timing or coupling of projects

Final Observations

Town Council will need to determine which funding method best accomplishes the goals of the nourishment project

Long term planning is essential – not only for initial project, but future maintenance and beach operating costs as well

Costs and timing will need to be accurately identified in order to begin creating the Financial Plan for funding of nourishment project

DEC would be pleased to assist the Town and its staff in creation of the Financial Plan and implementation of it