



Town of Southern Shores

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

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Meeting Minutes

Pitts Center – 5375 N. Virginia Dare Trail, Southern Shores, NC

Date: Tuesday, August 5, 2025

Time: 5:30 PM

Attendance

Present:

- Mayor Morey
- Mayor Pro Tem Neal
- Council Member Sherlock
- Council Member Batenic
- Council Member Neilson

Call to Order

Mayor Morey called the meeting to order at 5:30 PM.

The Council and public stood for the Pledge of Allegiance followed by a Moment of Silence.

Approval of Agenda

Mayor Morey requested to amend the agenda to include a budget amendment under New Business, Item # 7, and amend the closed session general statute to reflect personnel matters.

MOTION: Motion made by Council member Batenic to approve the agenda with the proposed amendments, Seconded by Council member Sherlock. The motion was seconded and unanimously approved (5-0).

Consent Agenda

Mayor Morey presented the consent agenda, which included minutes approval and budget amendments encompassing pages 3 through 12 of the packet.

MOTION: Motion to approve the consent agenda made by Council Member Sherlock, Seconded by Council Member Neilson. Motion carried unanimously.

Employee Introduction & Recognition

Police Chief Kole introduced the town's newest police officer, Hannah Varon, with a ceremonial swearing in conducted by Town Clerk Sheila Kane. Chief Kole then introduced Kelly Jones as the new Deputy Chief of Police. Deputy Chief Jones grew up in Camden County and comes from a family with a strong law enforcement background. Deputy Chief Jones has nearly 32 years of law enforcement experience, including service with Nags Head Police Department, North Carolina Probation and Parole, Camden County Sheriff's Office, North Carolina Alcohol and Law Enforcement, and most recently as a Deputy U.S. Marshal from 2002 until his retirement in 2025.

Chief Kole also recognized Corporal Daryl Brickhouse for his 20 years of service with the Southern Shores Police Department, describing him as "the type of police officer that you would want covering you" and noting his strong street smarts.

Staff Reports

Deputy Town Manager/Planning Director

Planning Director/Deputy Town Manager Wes Haskett reported that in July, the department issued 51 permits and collected \$18,319.42 in fees. The Historic Landmarks Commission will meet on August 26th at 9:00 AM to consider an application to designate 39 Ocean Boulevard as a historic landmark. The Planning Board will meet on August 18th at 5:00 PM to consider a zoning text amendment from town staff to establish requirements for reconsideration of disapproved development and amendment requests.

Police Chief

Chief Kole presented reports for June and July 2025. In June, there were 1,613 calls for service and in the month of July, there were 2,188 calls for service. Chief Kole provided details on traffic enforcement efforts during July 4th and other weekends when additional officers were on duty.

Chief Kole also reported on a saturation patrol conducted on July 22nd that involved multiple agencies throughout Dare County. Southern Shores officers participated significantly, accounting for 39 of the 83 total violations addressed.

Chief Kole mentioned the "Coffee with a Cop" event held on June 27th at Shore Coffee, noting it was successful but suggesting future events would be better scheduled outside the summer months due to the heat.

Regarding e-bikes, Chief Kole presented information about Senate Bill 576, which would give municipalities authority to create local ordinances regulating where e-bikes can be used. Unfortunately, the bill did not make it out of the short session. Currently, e-bikes are allowed anywhere bicycles are allowed, including sidewalks.

Council members expressed concerns about younger children riding e-bikes without helmets and the safety risks they pose. Chief Kole noted they must abide by state statutes until legislation is passed giving the town more regulatory authority.

Fire Chief

Fire Chief Limbacher reported 87 calls for July 2025, matching the number from the previous year. Chief Limbacher also noted they were in the process of interviewing candidates to fill remaining positions.

Town Manager

Town Manager Ogburn reported on two matters:

- Ocean Rescue Service: Southern Shores and Duck share the same contractor (Surf Rescue) but have separate contracts. Duck's contract expires at the end of 2025, while Southern Shores' contract runs through 2026. Both towns will go out to bid simultaneously, as the current contractor likely would not want to serve Southern Shores without Duck.
- North Carolina Resilient Coastal Communities Program: The town has received a grant for phases 1 and 2 of this program through the NC Division of Coastal Management. The primary deliverable will be community-specific resilient strategies and a project portfolio identifying potential improvements. Phases three and four will give us the funds to pay for any of those projects that we think are valuable to construct. The town has been partnered with CPE (Coastal Protection Engineering) for this work, with the \$70,000 award going to the consultant.

Town Attorney

Town Attorney Hobbs briefly reported that his office continues to assist with matters related to the fire department transition.

General Public Comment

Jimmy Pierce (47 Cypress) introduced himself as a candidate for Dare County Sheriff in the 2026 election. He outlined his 40 years of law enforcement experience, including service with Bertie County, Hertford County Sheriff's Office, Dare County Sheriff's Office under Sheriff Bert Austin, the NC Alcohol Law Enforcement Division, and currently with Nags Head Police Department.

Connie Serafin (21 East Dogwood) commented on two issues: 1) She questioned the need for another beach nourishment project, noting that the dunes are stable and have grown larger; and 2) She expressed safety concerns about walking on Ocean Boulevard, describing it as "a racetrack" with no shoulder, and advocated for sidewalks on both sides of the road.

Gard Skinner (151 Clamshell) spoke about changes to the beach following nourishment. As a regular beach user who surfs daily, he noted that while the beach nourishment has provided excellent protection for houses and dunes, it has negatively affected the beach's usability. The nourishment has pushed the waterline farther out, creating a dangerous channel about 8 feet deep between the waterline and outer bar. In his opinion, this has made the beach less safe for swimmers, particularly children and elderly people, as the drop-off is steep and abrupt. Skinner urged the Council to consider alternatives before adding more sand.

OLD BUSINESS

None

New Business

Design and Environmental Permitting Services, 2027 Beach Nourishment Project

Ken Willson from Coastal Protection Engineering presented an update on the beach monitoring conducted in June 2025 and discussed potential plans for a 2027 beach nourishment project.

Ken Willson explained that the original beach nourishment project had three primary goals: providing infrastructure protection from coastal storms, keeping up with erosion rates, and maintaining a healthy, usable beach width. He reported that the beach still holds more sand overall than at the completion of the 2022–2023 project, and that long-term erosion rates are generally tracking at the expected design rate of about 3 cubic yards per foot per year. However, he noted that from 2024 to 2025, the northern and central sections experienced net volume losses, while the southern section remained slightly positive, resulting in a small overall townwide decline over the past year.

Despite this, conditions remain strong and better than neighboring towns, which are already below their 2022 levels. Mr. Willson explained that the beach is projected to remain above its design protection threshold through 2027, meaning the Town could consider either participating in the scheduled 2027 regional renourishment cycle or potentially delaying until 2032–2034 if current trends continue. He emphasized that design and permitting work must begin now to preserve eligibility for 2027 and noted that the next monitoring survey in May–June 2026 will provide critical data to reassess the timeline.

Town Manager Ogburn clarified that the current request is for \$111,406 to fund tasks that would keep the 2027 option open, with a decision about actual participation to be made after the May/June 2026 survey results are analyzed.

MOTION: Council Member Batenic moved to approve spending \$111,406 to complete tasks 2A, and 2D and to add \$15,000 to Task 1 , Seconded by Council Member Neilson.

MOTION AMENDED: Council Member Batenic amended his motion to include funding to come from the beach nourishment capital reserve fund, Seconded by Council Member Neilson. The motion carried unanimously.

Public Hearing - Fire Truck Finance

Town Attorney Hobbs opened a public hearing as required by NCGS 160A-20 to consider the approval of a contract to refinance the loan on the T-12 E-1 custom aerial ladder truck operated by the Southern Shores Fire Department.

Town Manager Ogburn explained that this was the final step in assuming the loan for the ladder truck from the Southern Shores Volunteer Fire Department. The remaining amount on the loan is \$665,840.71 with a 4.948% interest rate and six remaining payments of \$125,269.84.

When asked about the truck's value, Fire Chief Limbacher indicated that a similar truck would currently cost about \$1.5 million with a 3-year waiting period. The current truck is 4 years old with an expected life of 20-30 years.

With no public comments received, the hearing was closed.

MOTION: Motion by Mayor Morey to approve the Town Manager to execute all required documents in order to finance the ladder truck, Seconded by Mayor pro tem Neal. The motion carried unanimously.

Consideration of Application for Advance Assistance as part of the Hazard Mitigation Grant Program

Town Manager Ogburn presented information about applying for Advance Assistance funding through the Hazard Mitigation Grant Program for a stormwater project at the northern town limits. This project would be shared with the Town of Duck to address stormwater issues in the vicinity of Sea Oats Trail. The grant would pay 100% of the survey work and design elements to make the project shovel ready.

Ogburn explained that the project is intended to keep the road open in emergencies, as it is the only way up and back. The federal government would pay 75% of the costs, with the state paying 25%.

MOTION: Motion by Mayor Morey to authorize the Town Manager to execute documents associated with the Hazard Mitigation Grant Program's Advanced Assistance application, Seconded by Mayor pro tem Neal. Motion carried unanimously.

Budget Amendment-Engine replacement 2018 Ford F150

Town Manager Ogburn presented a budget amendment in the amount of \$17,000 (from fund balance) to replace the engine in a police patrol vehicle. He explained the 2018 Ford F-150 has low miles and is worth salvaging. Police Chief Kole added they intend on keeping the vehicle for another seven to eight years.

MOTION: Council Member Sherlock moved to approve the Town Manager executing the budget amendment in the amount of \$17,000 as previously described, Seconded by Council Member Batenic. The motion carried unanimously.

Council Business

Council Member Batenic reported on Tourism Board activities, noting that occupancy collections are up 11.88% year over year and meal revenue is also up and over budget, indicating a strong summer season.

Mayor Pro Tem Neal announced an upcoming Entry Corridor Enhancement Committee meeting on August 12th at 9:00 AM to work on a phase 1 report based on survey results. He also mentioned he would be attending an "Our State, Our Homes" forum in Chapel Hill in early September as part of the Dare County Housing Task Force.

Council Member Neilson reported that Current TV meetings will begin rotating locations instead of always meeting in Manteo, with a meeting planned for the Pitts Center in the fall. He also noted his role as the town's representative for the 250th anniversary of the Declaration of Independence celebration.

Mayor Morey stated that as a member of the Long Range Tourism Management Plan Committee, she continues to advocate for the Visitors Bureau to allocate funding to promote check-in days other than Saturday to reduce traffic congestion. She also called attention to the beautiful artwork displayed in the Pitts Center, including a recently donated tapestry.

Closed Session

MOTION: Motion by Council Member Neilson, Seconded by Council Member Batenic, to go into closed session pursuant to NCGS 143-318.11(a)(6) to consider personnel matters. Motion carried unanimously.

Adjourn

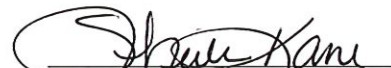
Upon returning to open session and taking no action, Mayor Morey **moved** to adjourn the August 5, 2025 meeting at 8:35 p.m., Seconded by Council Member Batenic. The motion carried unanimously.

ATTEST:


Elizabeth Morey, Mayor



Respectfully submitted,


Sheila Kane, Town Clerk

Town of Southern Shores Budget Amendment Number # 1

Public Works

Increases

Decreases

<u>Account Number</u>	<u>Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Description</u>	<u>Amount</u>
40-39914	<u>Revenues</u> Insurance Proceeds	\$2,245			
57-50906	<u>Expenditures</u> Street Maint.	\$2,245			
TOTAL			TOTAL		\$ -

Explanation: Insurance money received to replace street light at 11th Avenue

Recommended By:

Approved By: Town Council

Cliff Ogburn, Town Manager

Elizabeth Morey, Mayor

Date _____

Town of Southern Shores Budget Amendment Number # 2

Streets, Buildings, etc

Increases

Decreases

[illegible]

Explanation: Contract was signed in FY 24-25 but work was not completeed on 6/30/25

Recommended By:

Cliff Ogburn, Town Manager

Approved By: Town Council

Elizabeth Morey, Mayor

Date _____

Town of Southern Shores Budget Amendment Number # 3

Streets

Increases

[illegible]

Explanation: Survey requested in FY 24-25 but not received by 6/30.

Recommended By:

Cliff Ogburn, Town Manager

Approved By: Town Council

Elizabeth Morey, Mayor

Date _____

**Town of Southern Shores
Budget Amendment Number # 4**

Public Works

Increases

[illegible]

Decreases

[illegible]

Explanation: Trash Roll Back services for July and August

Recommended By:

Cliff Ogburn, Town Manager

Approved By: Town Council

Elizabeth Morey, Mayor

Date _____

**Town of Southern Shores
Budget Amendment Number # 5**

Police Increases

Decreases

[illegible]

Explanation: Equipment for Police Vehicles were ordered but had not arrived before 6/30/25

Recommended By:

Approved By: Town Council

Cliff Ogburn, Town Manager

Elizabeth Morey, Mayor

Date _____

Town of Southern Shores
Budget Amendment Number # 6

Streets, Buildings,etc

Increases

Decreases

[illegible]

Explanation: Contract was entered into in FY 24-25 for new doors and electronic access for Town Hall but was not completed by 6/30/25

Recommended By:

Approved By: Town Council

Cliff Ogburn, Town Manager

Elizabeth Morey, Mayor

Date _____

Town of Southern Shores
Budget Amendment Number # 7

Police Increases

Decreases

[illegible]

Explanation: Uniforms were not received before 6/30/25

Recommended By:

Approved By: Town Council

Cliff Ogburn, Town Manager

Elizabeth Morey, Mayor

Date

**Town of Southern Shores
Budget Amendment Number # 8**

Streets

Increases

[illegible]

Explanation: Beach Monitoring and Pre- Permitting not completed before 6/30

Recommended By:

Approved By: Town Council

Cliff Ogburn, Town Manager

Elizabeth Morey, Mayor

Date _____

**Town of Southern Shores
Budget Amendment Number # 9**

Police Increases

Decreases

[illegible]

Explanation: To purchase a replacement vehicle for Police

Recommended By:

Approved By: Town Council

Cliff Ogburn, Town Manager

Elizabeth Morey, Mayor

Date _____

**Town of Southern Shores
Budget Amendment Number # 10**

[illegible]

Explanation: Construction Admin. for Juniper Bridge that was not completed by 6/30

Recommended By:

Approved By: Town Council

Cliff Ogburn, Town Manager

Elizabeth Morey, Mayor

Date _____



AGENDA ITEM SUMMARY

Item # 4

MEETING DATE: August 5, 2025

ITEM TITLE: Design and Environmental Permitting Services, 2027 Beach Nourishment Project

ITEM SUMMARY: Ken Willson with Coastal Protection Engineering will present the preliminary findings of the beach monitoring data collected this past June. He will also discuss the proposal for Design and Environmental Permitting Services for a potential 2027 Beach Nourishment Project.

The overarching proposal originally presented by CPE can be approved by tasks. The Design and Environmental Permitting Services proposal provided to staff on July 2 included a base cost of \$311,842.48. In addition to that, there were two optional costs that may or may not be needed depending on NC Division of Coastal Management feedback. Those costs included Task 2B, which was listed at \$5,127.50 and Task 2C, which did not list a cost. Since July 2, CPE has determined that the cost of Task 2C, if it is needed, would be \$10,507.50.

Currently, CPE is providing services to the Town under the Pre-Permitting Coordination & Sediment Analysis contract approved on June 4, 2025. A Change Order was authorized by the Town on July 10, 2025, which increased the not-to-exceed cost of Task 1 (Pre-Permitting Coordination) by \$15,000. This additional cost was what was estimated to be needed to keep CPE staff working through August 5 on services that would have otherwise fallen under Tasks 1 and 3 of the Design and Environmental Permitting Services for 2027 Project proposal submitted to the Town on July 2.

In order to more fully examine the survey monitoring data since the 2022/23 project and to allow the Town to further deliberate whether to fully authorize the Design and Environmental Permitting Services work, while allowing CPE to continue to maintain the Town's option to participate in the project, CPE is requesting that the Town authorize an additional increase of \$15,000 in the not-to-exceed total for Task 1 of the Pre-Permitting Coordination & Sediment Analysis contract under which they are currently providing services, and to authorize Tasks 2A (Bathymetric Survey and Sediment Sampling of Borrow Area A) and 2D (Cultural Resource Assessment), which are included in the Design and Environmental Permitting Services proposal submitted on July 2. The total cost of Task 2A and 2D is \$96,406.48.

If the Town Council were to approve the overall contract at its September Council meeting, CPE would provide an accounting of the Time and Materials costs spent on services that would have otherwise fallen under Tasks 1 and 3 of the Design and Environmental Permitting Services, and provide an updated budget for the remaining items yet to be performed under

those Tasks, which would reflect a reduction in the original budget based on the efforts expended to date.

STAFF RECOMMENDATION AND REQUESTED ACTION: Staff requests that following Ken's presentation, the Town Council consider approving the attached proposal.

ATTACHMENT: Proposal for Design and Environmental Permitting Services for the 2027 Beach Nourishment project

**COASTAL PROTECTION ENGINEERING OF NORTH CAROLINA, INC.
SERVICES AGREEMENT**

All in accordance with the following terms and conditions.

1. **SCOPE OF SERVICES:** **COASTAL PROTECTION ENGINEERING OF NORTH CAROLINA, INC. ("CPE")** agrees to perform for the undersigned CLIENT, engineering and consulting ("Services") described in the attached Proposal and/or as follows:

PROPOSAL: Design and Environmental Permitting Services 2027 Beach Nourishment, Town of Southern Shores, North Carolina

2. **FEES, INVOICES AND PAYMENTS:** The Services associated with Task 1, Sub-Task 2A, Sub-Task 2D, and Task 3 will be performed for the lump sum fee of **\$311,842.48 (Three hundred eleven thousand, eight hundred forty-two dollars and forty-eight cents).**

The Services associated with Sub-Task 2B will be performed on a time and materials basis, not to exceed **\$5,127.50 (Five thousand, one hundred twenty-seven dollars and fifty cents).**

The Services associated with Sub-Task 2C will be performed on a time and materials basis, however a not-to-exceed cost has not yet been established.

CPE will seek additional written authorization prior to conducting services under Sub-Task 2B or 2C.

Invoices will be submitted by CPE no more frequently than every month, with payment due upon CLIENT'S receipt of invoice. Payment shall be in U.S. Dollars. CLIENT shall be responsible for payments (without deduction or offset from the total invoice amount) of any and all sales, use, value added, gross receipts, franchise and like taxes, tariffs and duties levied against CPE or its employees by any government or taxing authority. A service charge equal to one-half percent (1/2 %) per month, or the maximum rate permitted by law,

whichever is less, will be added to all accounts which remain unpaid for more than thirty (30) calendar days beyond the date of the invoice. Should there be any dispute as payments to be made on a percent complete basis to any portion of an invoice, the undisputed portion shall be promptly paid.

3. **CLIENTS COOPERATION:** To assist CPE in performing the Services, CLIENT shall (i) provide CPE with relevant material, data, and information in its possession pertaining to the specific project or activity, (ii) consult with CPE when requested, (iii) permit CPE reasonable access to relevant project sites, (iv) ensure reasonable cooperation of CLIENT's employees in CPE's activities, and (v) notify and report to all regulatory agencies as required by such agencies.

4. **CONFIDENTIALITY:** In the course of performing Services, to the extent that CLIENT discloses to CPE, business or technical information that CLIENT clearly marks in writing as confidential or proprietary, CPE will exercise reasonable efforts to avoid the disclosure of such information to others. Likewise, to the extent that CPE discloses to CLIENT, business or technical information that CPE clearly marks in writing as confidential or proprietary, CLIENT will exercise reasonable efforts to avoid the disclosure of such information to others.

Nothing herein is meant to prevent nor shall be interpreted as preventing either party from disclosing and/or using any information or data (i) when the information or data are actually known to the receiving party before being obtained or derived from the transmitting party, (ii) when information or data are generally available to the public without the receiving party's fault at any time before or after it is acquired from the transmitting party; (iii) where the information or data are obtained or acquired in good faith at any

time by the receiving party from a third party who has the same in good faith and who is not under any obligation to the transmitting party in respect thereto; (iv) where a written release is obtained by the receiving party from the transmitting party; (v) three (3) years from the date of receipt of such information; or (vi) when required by process of law; or by North Carolina Public Records Law; provided, however, upon service of such process, the recipient thereof shall use reasonable efforts to notify the other party and afford it an opportunity to resist such process.

5. DELAYS AND CHANGES IN CONDITIONS:

If CPE is delayed or otherwise in any way hindered or impacted at any time in performing the Services by (i) an act, failure to act or neglect of CLIENT or CLIENT's employees or any third parties; (ii) changes in the scope of the work; (iii) unforeseen, differing or changed circumstances or conditions including differing site conditions, acts of force majeure (such as fires, floods, riots, and strikes); (iv) changes in government acts or regulations; (v) delay authorized by CLIENT and agreed to by CPE; or (vi) any other cause beyond the reasonable control of CPE, then 1) the time for completion of the Services shall be extended based upon the impact of the delay, and 2) CPE shall receive an equitable compensation adjustment. Any such equitable adjustment shall be based on CPE's then current Time and Material Rates, as may be provided in a Rate sheet attached hereto.

- 6. INSURANCE:** CPE is presently protected by Worker's Compensation Insurance as required by applicable law and by General Liability and Automobile Liability Insurance (in the amount of \$1,000,000 combined single limit) for bodily injury and property damage. Insurance certificates will be furnished to CLIENT on request. If the CLIENT requires further insurance coverage, CPE will endeavor to obtain said coverage, and CLIENT shall pay any extra costs therefor.

- 7. INDEMNITIES:** CPE shall defend, indemnify and hold harmless CLIENT and its officers and employees from and against loss or damage to tangible property, or injury to persons, to the extent arising from the negligent acts or omissions or willful misconduct of CPE, its borrowed servants and their employer and its subcontractors, and their respective employees and agents acting in the course and scope of their employment. CLIENT shall defend, indemnify and save harmless CPE (including its borrowed servants and their employers and its officers, and employees) from and against, any loss or damage to tangible property, or injury to persons, to the extent arising from the negligent acts or omissions or willful misconduct of CLIENT, its officers and employees.

8. LIMITATIONS OF LIABILITY:

- a. GENERAL LIMITATION - CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED BREACH OF WARRANTY BY CPE SHALL BE TO REQUIRE CPE TO REPERFORM ANY DEFECTIVE SERVICES. CPE'S LIABILITY AND CLIENT'S REMEDIES FOR ALL CAUSES OF ACTION ARISING HEREUNDER WHETHER BASED IN CONTRACT, WARRANTY, NEGLIGENCE, , OR ANY OTHER CAUSE OF ACTION, SHALL NOT EXCEED EXCEPT FOR THE MUTUAL INDEMNIFICATIONS SET FORTH IN SECTION 7 ABOVE. IN THE CUMULATIVE AGGREGATE (INCLUDING ANY INSURANCE PROCEEDS) WITH RESPECT TO ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHATEVER MINIMUM AMOUNT MAY BE REQUIRED BY LAW OR, IF NONE, THE AMOUNT OF COMPENSATION FOR SUCH SERVICES,
- b. CONSEQUENTIAL DAMAGES: FURTHER AND REGARDLESS OF ANY OTHER PROVISION HEREIN, CPE SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, DECLINE

IN PROPERTY VALUE, REGULATORY AGENCY FINES, LOST PRODUCTION OR LOSS OF USE) INCURRED BY CLIENT OR FOR WHICH CLIENT MAY BE LIABLE TO ANY THIRD PARTY OCCASIONED BY THE SERVICES OR BY APPLICATION OR USE OF REPORTS OR OTHER WORK PERFORMED HEREUNDER.

9. **GOVERNING LAWS:** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.

10. **TERMINATION:** Either party may terminate this Agreement with or without cause upon forty five (45) days' written notice to the other party. Upon such termination, CLIENT shall pay CPE for all Services performed hereunder up to the date of such termination. In addition, if CLIENT terminates, CLIENT shall pay CPE all reasonable costs and expenses incurred by CPE in effecting the termination, including, but not limited to non-cancelable commitments and demobilization costs.

11. **ASSIGNMENT:** Neither CPE nor CLIENT shall assign any right or delegate any duty under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, CPE may, upon notice to CLIENT, assign, pledge or otherwise hypothecate the cash proceeds and accounts receivable resulting from the performance of any Services or sale of any goods pursuant to this Agreement.

12. **MISCELLANEOUS:**

a. **ENTIRE AGREEMENT, PRECEDENCE, ACCEPTANCE MODIFICATIONS:** The terms and conditions set forth herein constitute the entire understanding of the Parties relating to the provisions of the Services by CPE to the CLIENT. All previous proposals, offers, and other communications relative to the provisions of these Services by CPE, oral or written, are hereby superseded, except to the extent that they have been expressly incorporated by reference herein.

In the event of conflict, the three pages of this Agreement shall govern. CLIENT may accept these terms and conditions by execution of this Agreement or by authorizing CPE to begin work. Any modifications or revision of any provisions hereof or any additional provisions contained in any purchase order, acknowledgement or other document issued by the CLIENT is hereby expressly objected to by CPE and shall not operate to modify the Agreement.

b. **DISPUTES, ATTORNEY FEES** – Any dispute regarding this Agreement or the Services shall be resolved first by exchange of documents by senior management of the parties, who may be assisted by counsel. Any thereafter unresolved disputes shall be litigated in the state whose law governs under Section 9 hereunder. In any litigation, the Prevailing Party shall be entitled to receive, as part of any award or judgment, eighty percent (80%) of its reasonable attorneys' fees and costs incurred in handling the dispute. For these purposes, the "Prevailing Party" shall be the party who obtains a litigation result more favorable to it than its last formal written offer (made at least twenty calendar days prior to the formal trial) to settle such litigation.

c. **WAIVER OF TERMS AND CONDITIONS** - The failure of CPE or CLIENT in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in the Agreement or the waiver by CPE or CLIENT of any breach of the terms or conditions of this Agreement shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

d. **NOTICES** – Any notices required hereunder may be sent by orally confirmed US Mail, courier service (e.g. FedEx), orally confirmed telecopy (fax) or orally confirmed email (further confirmed by US Mail) to the addresses set forth below.

e. **SEVERABILITY AND SURVIVAL** - Each provision of this Agreement is severable from the others. Should any provision of this Agreement be found invalid or unenforceable, such provision shall be ineffective only to the extent required by

law, without invalidating the remainder of such provision or the remainder of this Agreement.

Further, to the extent permitted by law, any provision found invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable consistent with the parties' intent. The terms and conditions set forth herein shall survive the termination of this Agreement.

CLIENT and CPE agree to the foregoing **(INCLUDING THE LIMITATIONS ON LIABILITY IN SECTIONS herein)** and have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

Executed on _____, 2025

**COASTAL PROTECTION ENGINEERING OF
NORTH CAROLINA, INC.**

By (Sign): _____

Print Name: Kenneth Willson

Title: President

Address: 4038 Masonboro Loop Road,

Wilmington, North Carolina, 28409

Phone: (910) 399-1905

Fax: N/A

E-mail: kwillson@coastalprotectioneng.com

**TOWN OF SOUTHERN SHORES, NORTH
CAROLINA**

By (Sign): _____

Print Name: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

Attachments: Exhibit A – Scope of Professional Services
 Exhibit B – Breakdown of Cost
 Exhibit C – Schedule of Deliverables

EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2027 BEACH NOURISHMENT

Item 4.

Coastal Protection Engineering of North Carolina, Inc. (CPE) will provide engineering, environmental, and geotechnical services to the Town of Southern Shores (TOWN) in support of a beach nourishment project scheduled for 2027. The specific services include project management, environmental documentation and permitting, and beach fill engineering design.

The CPE project manager will be responsible for project administration of the Scope of Work with assistance from other senior staff as appropriate. Administration includes coordination with the client, progress meetings and status updates, budget control, scheduling, planning, internal meetings, managing sub-contractors, and other associated management tasks required to complete the project according to the scope in a timely manner. Five (5) in-person project meetings between CPE and the TOWN are anticipated over the anticipated 12 months to complete this Scope of Work. Four (4) of the meetings are assumed to be multi-Town meetings, for which costs will be shared among the Towns. The fifth meeting is intended to be an update to the Town Council to provide project updates and to answer any questions from staff or elected officials. In addition to these meetings, CPE will provide the TOWN with a monthly 1-page summary of activities via e-mail. Costs associated with Project Management have been incorporated into each of the project tasks, which are described in detail below.

TASK 1: Environmental Documentation and Permitting Services

Sub-Task 1A: Permitting

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

The USACE will issue the Department of the Army (DA) permit, but project planning and formulation during the preparation of the environmental documents will also include consultation with other Federal agencies including, but not necessarily limited to, the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), Bureau of Ocean and Energy Management (BOEM), and the Environmental Protection Agency (EPA). The lead State agency will be the NC DCM who will issue the CAMA Major Permit, but coordination will involve other State agencies including, but not limited to, the North Carolina Division of Marine Fisheries (NC DMF), North Carolina Wildlife Resources Commission (NC WRC), North Carolina Division of Water Resources, (NC DWR), and North Carolina Division of Water Quality (NC DWQ).

Task 1 includes the development and submittal of the complete Department of Army (DA) Individual Permit (IP) application and the CAMA Major Permit application directly to the respective agencies.

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The CAMA Major Permit application package will include the required MP-1 and MP-2 forms along with plan drawings and adequate additional information that will serve to satisfy the various divisions and agencies who will review the application. This will include information pertaining to borrow area sediment characteristics, threatened and endangered species (marine and terrestrial), essential fish habitat (EFH), and other natural resources. Similar information will be provided in a DA IP application to the USACE Regulatory Division. Both applications will be submitted digitally to the respective agencies. The cost listed for Task 1 in Exhibit B includes the \$475 permit fee required, which will be paid directly by CPE at the time the CAMA Major Permit application is submitted.

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

- NC DCM Coastal Area Management Act (CAMA) Major Permit
- NC DWR General Water Quality Certification
- NC State Historic Preservation Office's concurrence
- DA Individual Permit in compliance with Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act
- USFWS and NMFS concurrence with Section 7 of the Endangered Species Act (ESA).
- NMFS concurrence with the Magnuson-Stevens Fishery Conservation and Management Act.
- US EPA concurrence with the Clean Water Act (CWA)

This proposal includes CPE's participation in up to two (2) additional meetings with the various agencies/stakeholders during the permit application development and review. Additional coordination with resource agencies/stakeholders will be conducted via telephone and email correspondence as needed. The submittal of the CAMA Major Permit application and DA IP application will serve as project deliverables.

CPE will, in good faith, submit complete DA IP and CAMA Major Permit applications; however, the USACE and/or NC DCM may issue a Request for Additional Information (RAI) in response to these permit applications. Should this occur, an additional task order will be submitted to the TOWN under a separate Scope of Work to address the specific RAI requirements.

Sub-Task 1B: Environmental Documentation

An interagency meeting was held on June 13, 2025 to determine the necessary environmental documentation that would meet NEPA requirements and support the permitting approach associated with the proposed 2027 maintenance project. The scope and associated costs provided in this proposal have been developed based on the feedback received during the June 2025 interagency meeting. Furthermore, these costs have been developed under the assumption that each of the four Towns associated with the multi-town cooperative beach nourishment project will

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cost share the expenses equally. It is possible that a resource or regulatory agency will issue an RAI in response to these environmental documents. Should this occur, a change order may be submitted to the TOWN to cover out of scope efforts to address the specific RAI requirements.

A description of the environmental documentation efforts are as follows:

Environmental Assessment (EA):

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

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

CPE will draft a “Batched” EA developed for the 2027 re-nourishment which will assess the impacts of the actions proposed by all four Towns collectively. This single document will include a description of the specific actions proposed for each of the four Towns and will be utilized by the USACE and BOEM to ensure NEPA requirements are met. CPE will utilize the “Batched” EA that was drafted in support of the 2022 re-nourishment project as a template which will serve as a means to reduce costs.

A Preliminary Draft EA will be submitted to the USACE Regulatory Division and the BOEM for internal editing. Once all comments from USACE Regulatory and BOEM have been addressed, a notification to the Federal Register will declare the release of the Draft EA to the public. Following a 30-day commenting period, CPE will address all comments received by the USACE. A Final EA will then be developed and released again via an announcement to the Federal Register. Ten (10) printed copies and ten (10) digital copies of the Final EA will be produced and submitted to the USACE and BOEM.

The submittal of the Final EA will serve as a project deliverable.

Supplemental Programmatic Essential Fish Habitat (EFH) Assessment: The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) was enacted by the U.S. Congress to protect marine fish stocks and their habitat, prevent and stop overfishing and minimize bycatch. Congress defined EFH as “those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.” The MSFCMA requires that EFH be identified for all fish species federally managed by the Fishery Management Councils (FMCs) and NMFS.

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CPE will supplement the “Batched” EFH submitted to NMFS for the 2022 re-nourishment project with additional information, newly designated EFH constituents (should they exist), and updated biological data relevant to the project area. Furthermore, should new borrow area(s) be included within the proposed project, information on those sites will also be included. The “Batched” EFH assessment will be submitted by CPE on behalf of the four Towns to the USACE and BOEM. The USACE and BOEM will then enter consultation with NMFS Habitat Conservation Division (HCD) who will review the document to ensure it is comprehensive and complete. Once determined that the document is comprehensive and complete, NMFS HCD is anticipated to issue their concurrence to the USACE fulfilling this aspect of the NEPA requirement.

The submittal of the Final Supplemental Programmatic EFH assessment will serve as a project deliverable.

Biological Assessment (BA): Under Section 7 of the ESA, federal agencies must consult with USFWS and NMFS Protected Resource Division (PRD) on activities that may affect ESA-listed species. These federal agency consultations are designed to help federal agencies in fulfilling their duty to ensure that their actions do not jeopardize the continued existence of a species or destroy or adversely modify designated critical habitat. As such, to ensure compliance with Section 7 requirements, CPE will facilitate the consultation process between the USACE and BOEM and the federal resource agencies to ensure that they are provided adequate information regarding the anticipated project-related impacts as they pertain to protected species. Based on communications with USACE and BOEM, it is presumed that due to the issuance of the 2020 SARBO, this project will not require the submittal of a BA. Furthermore, USFWS has indicated that given the previous consultations on the Duck beach nourishment program, USFWS can use information provided in the EA to consult with the USACE. CPE will respond to additional data requests by USFWS and NMFS PRD as needed.

Sub-Task 1C: BOEM Lease Request

The use of borrow material obtained from within federal waters on the Outer Continental Shelf (OCS) requires the issuance of a lease agreement from BOEM under the auspices of the Outer Continental Shelf Lands Act (OCSLA). It is expected that material for this proposed project will be obtained from Borrow Area A (one of the two areas included in the lease agreement between Dare County and BOEM issued to support the 2017 and 2022 nourishment events) and/or a new yet-to-be-defined borrow area in the OCS. A request for a new non-competitive negotiated lease agreement that will allow for the use of borrow material from within federal waters will be developed and submitted to BOEM for their consideration. Elements included in the lease request may include:

1. A detailed description of the proposed project and how it qualifies under Section 8(k) of the OCSLA
2. A description of the proposed borrow area(s) and placement area(s) including digital maps and ESRI shapefiles and metadata depicting the same, navigation features, geologic sampling locations, and any hard or live-bottom benthic habitat

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3. Any geological data (such as sediment sample locations and grain size data, core logs, photographs, *etc.*) and geophysical data (such as sub-bottom profiler, marine magnetometer, sidescan sonar, and bathymetric data, *etc.*) used in borrow area selection and design
4. Any other known uses of the OCS or other infrastructure in the borrow area
5. A description of the environmental evaluations and corresponding documents that have been completed or are being prepared for offshore and onshore components of the project, including any NEPA documentation
6. A target date or range of dates when the resources will be needed
7. A description of the person or government entities undertaking the project
8. A list of any permits, licenses, or authorizations required for the project and their current status
9. Any known potential inconsistencies with state or local statutes, regulations, or ordinances
10. The name, title, telephone number, mailing address and email address of any points of contact for any federal agencies, state, or local governments, and contractor(s) with whom the applicant has contracted or intends to contract
11. A statement explaining who authorized the project, and whether it is federally authorized
12. A statement explaining how the project is to be funded, indicating whether it is federally funded in whole or in part

The submittal of the non-competitive negotiated lease agreement including the aforementioned information to BOEM will serve as a project deliverable.

TASK 2: Borrow Area Permitting Support Services

Borrow Area A is located on the Outer Continental Shelf between 5.0 and 6.5 miles offshore of the Towns of Kill Devil Hills and Nags head in water depths between 50 to 60 ft (NAVD88). The borrow area was permitted and used in the 2017 and 2022/2023 beach nourishment projects for the Towns of Duck, Southern Shores, Kitty Hawk, and Kill Devil Hills. Based on the May/June 2023 Post-construction borrow area survey, approximately 10.2 million cubic yards remain within the limits of Borrow Area A following completion of the 2022/2023 beach re-nourishment project.

In addition, over the past 2 years, a regional sand resource investigation has been conducted to identify long-term sources of sand for future beach nourishment projects in northern Dare County. Through the course of this investigation, several proposed borrow areas have been designed including the potential to expand Borrow Area A. This proposal assumes that sand for the proposed 2027 re-nourishment project may come from a combination of an expanded Borrow Area A and/or the additional proposed borrow areas identified through the more recent regional sand resource investigation.

Based on discussions from the Interagency Meeting held on June 13, 2025, CPE anticipates that the State may require a bathymetric survey to assess whether previously dredged portions of Borrow Area A can be used for the 2027 project. Therefore, a bathymetric survey of Borrow Area A is included in this scope to confirm that sediment infilling has not occurred. If infilling is

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identified, CPE expects the State to mandate sediment sampling in Borrow Area A to evaluate compatibility with the State's beach fill standards.

To evaluate potential sediment infilling in Borrow Area A, a multi-beam bathymetric survey of the borrow area and collection of additional sediment samples will be conducted. Bathymetric survey and sediment sampling are described below in Sub-task A and B, respectively.

Sub-Task 2A: Bathymetric Survey and Sediment Sampling of Borrow Area A

A survey will be conducted to collect swath bathymetry data in a manner that achieves full seafloor coverage within the footprint of Borrow Area A. This will include any areas proposed for expansion of Borrow Area A as described in the Dare County regional sand resource investigation. Work will be conducted by a subcontractor under the direct supervision of a licensed North Carolina Professional Surveyor and/or a National Society of Professional Surveyors (NSPS) Certified Hydrographer. Surveys will be performed to meet or exceed the minimum performance standards for the Corps of Engineers Hydrographic Surveys, USACE specifications manual EM 1110-2-1003 and reviewed by an ASCM Certified Hydrographer.

The primary data product resulting from the multi-beam bathymetric survey will be ASCII XYZ survey data, which will be provided in North Carolina State Plane US Survey feet relative to the North American Datum of 1983 (2011) and the North American Vertical Datum of 1988 (Geoid18).

As part of Sub-Task 2A, 51 surface samples will be collected via a grab sampler within Borrow Area A at the same locations at which vibracores were collected in 2014 and grab samples were collected in 2020. A grab sampler is a tethered device that collects sediment from the surface of the seafloor.

Once collected, the multi-beam survey data will be compared with the May/June 2023 post-construction borrow area survey to determine if areas in Borrow Area A have infilled with sediments. A brief letter report will be prepared and submitted to both the TOWN and NC DCM, detailing the results of the survey comparisons. The report will provide graphics sufficient to illustrate changes within the borrow area. As an appendix to this letter report, a signed and sealed survey report will also be provided. The survey report will include a description of the methodology and equipment used, a survey chart of the borrow area with contours, and survey notes.

Analysis of surface sediment samples collected within Borrow Area A may be required if significant infilling is determined to have occurred based on the comparison of the May/June 2023 post-construction bathymetric data and data collected as part of this proposal. The sediment analysis is included and described under Sub-Task 2B.

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Sub-Task 2B: Borrow Area A Surface Sample Sediment Analysis (Optional)

Sediment analysis will be performed on those grab samples located in areas where infilling has occurred based on the comparison of post-construction multi-beam data and data collected as part of Sub-Task A. Sediment samples will be analyzed for the following sedimentary properties: color, mean grain size, percent fines, percent granular, percent gravel, and sorting.

During sieve analysis, the wet, dry and washed Munsell colors will be noted. Sieve analysis of the sediment samples will be performed in accordance with the American Society for Testing and Materials (ASTM) Standard Methods Designation D 422-63 for particle size analysis of soils. This method covers the quantitative determination of the distribution of sand size particles. For sediment finer than the No. 230 sieve (4.0 phi) the ASTM Standard Test Method, Designation D 1140-00 will be followed. Weights retained on each sieve will be recorded cumulatively. Grain size results will be entered into the gINT® software program, which computes the mean and median grain size, sorting, silt/clay percentages for each sample using the moment method.

The number of samples that may require analysis under this Task is dependent upon the results of the survey comparisons and, therefore, CPE proposes to complete this Task on a time and materials basis not to exceed the amount listed in Exhibit B under Sub-Task 2B. Should the analysis included under Sub-Task 2B be required, the results of the analysis will be included in the letter report described under Sub-Task 2A.

Sub-Task 2C: Borrow Area A Supplemental Vibracores (Optional)

CPE will coordinate directly with NC DCM staff regarding the results of Sub-Tasks 2A and 2B. If through this consultation, NC DCM determines it is necessary to further evaluate material in areas where bathymetric data indicates an increase in elevation, up to five (5) supplemental vibracores will be collected in specific locations within Borrow Area A. Vibracores will be collected at locations where recent bathymetric data indicates an increase in elevation by more than 2 feet since the 2023 post-construction survey was conducted.

The cost for Sub-Task 2C listed in Exhibit B includes all costs associated with collection of vibracore samples, logging/ photographing/sampling of vibracores, sediment analysis of samples taken from vibracores, and the development of deliverables. Vibracores will be collected by a sub-contractor under contract with CPE. Vibracores will aim to retrieve a minimum 5 ft. of undisturbed sediment sample from below the seafloor. Vibracores will have a minimum diameter of 3 inches. If cores are longer than 5 feet, the cores will be cut into even length sections, no longer than 5-foot length segments. The segments will be appropriately marked as to the sequence of segments and sample location.

CPE geologists will log the vibracores by describing sedimentary properties by layer in terms of layer thickness, color, texture (grain size), composition and presence of clay, silt, gravel, or shells and other identifying features. Photos of the vibracore will be taken at 2-foot intervals and provided as part of the deliverable. Sediment samples will be extracted from the vibracores at irregular intervals based on distinct stratigraphic layers in the sediment sequence. The vibracores will then be wrapped and archived. Cores will be stored for a period of up to two (2) years or a

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time following the construction of the project, whichever comes first. After this time, cores will be relinquished to the client or disposed of.

The sediment samples taken from the vibracores during the logging process will be analyzed to determine color, percent fines (mud/silt) and grain size distribution. During sieve analysis, any obvious uncharacteristically large fragments (such as whole shell or large shell fragments) will be removed, and the description (weight and size) of the material will be noted. The wet, dry and washed Munsell colors will be noted. Sieve analysis of the sediment samples will be performed in the same way described under Sub-Task 2B. The sediment analysis included in this scope of work does not include carbonate analysis.

If Sub-Task 2C is required, the results of the analysis will be included in the letter report described under Sub-Task 2A. This letter will ultimately be submitted as an addendum to the CAMA Major Permit application. If Sub-Task 2C is completed, the letter report will include a map of the location of the vibracores, vibracore logs, photographs, and sediment grain size distribution curves. The letter report will also include conclusions drawn from the data in terms of sediment compatibility of the Borrow Area with the recipient beach. Two (2) hard copies and a digital copy of the letter report will be provided to the TOWN at the same time it is submitted by CPE to the Division of Coastal Management.

Sub-Task 2D: Cultural Resource Assessment

CPE, along with its chosen sub-contractor, will conduct a comprehensive underwater cultural resource assessment of the proposed borrow areas shown in Figure 1. The objective of this assessment is to identify any potentially significant cultural resources within the proposed borrow areas. The southern proposed borrow areas (D-4, D-5, D-6, and D-7), located offshore of the Town of Kill Devil Hills and in proximity to Borrow Area A, which was used for the 2022/2023 Dare County beach re-nourishment project, fall within federal waters on the Outer Continental Shelf (OCS) and are under the jurisdiction of the Bureau of Ocean Energy Management (BOEM). The northernmost proposed borrow area (E-8), located approximately 3.7 miles north of the Town of Duck, is situated in state waters.

The assessment surveys will be designed in coordination with and approved by the Underwater Archaeology Branch of the NC DNCR and BOEM. Sub-Task 2D only includes conducting a geophysical survey for potential archaeological resources. It does not include any archaeological diving. The survey will assess potential effects on cultural resources, and, as necessary, establish appropriate buffer zones around such resources to mitigate impacts from proposed construction on potentially significant cultural resources in the vicinity. As part of the assessment, bathymetric data will be collected between previously surveyed track lines to obtain a higher resolution bathymetric surface of the borrow sites.

The sub-contractor will provide all personnel and equipment to carry out the survey, process the data, and provide a written report detailing the investigation. The report will be provided to the NC DCM, NC DNCR, the USACE, and BOEM. The report will include methodology, historical background information, previous investigations, a description of the findings as well as

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conclusions and recommendations. CPE will support the TOWN and subcontractor with coordination with NC DNCR and BOEM to obtain approval for the project. However, consultation with Federally recognized tribes is not included in this proposal.

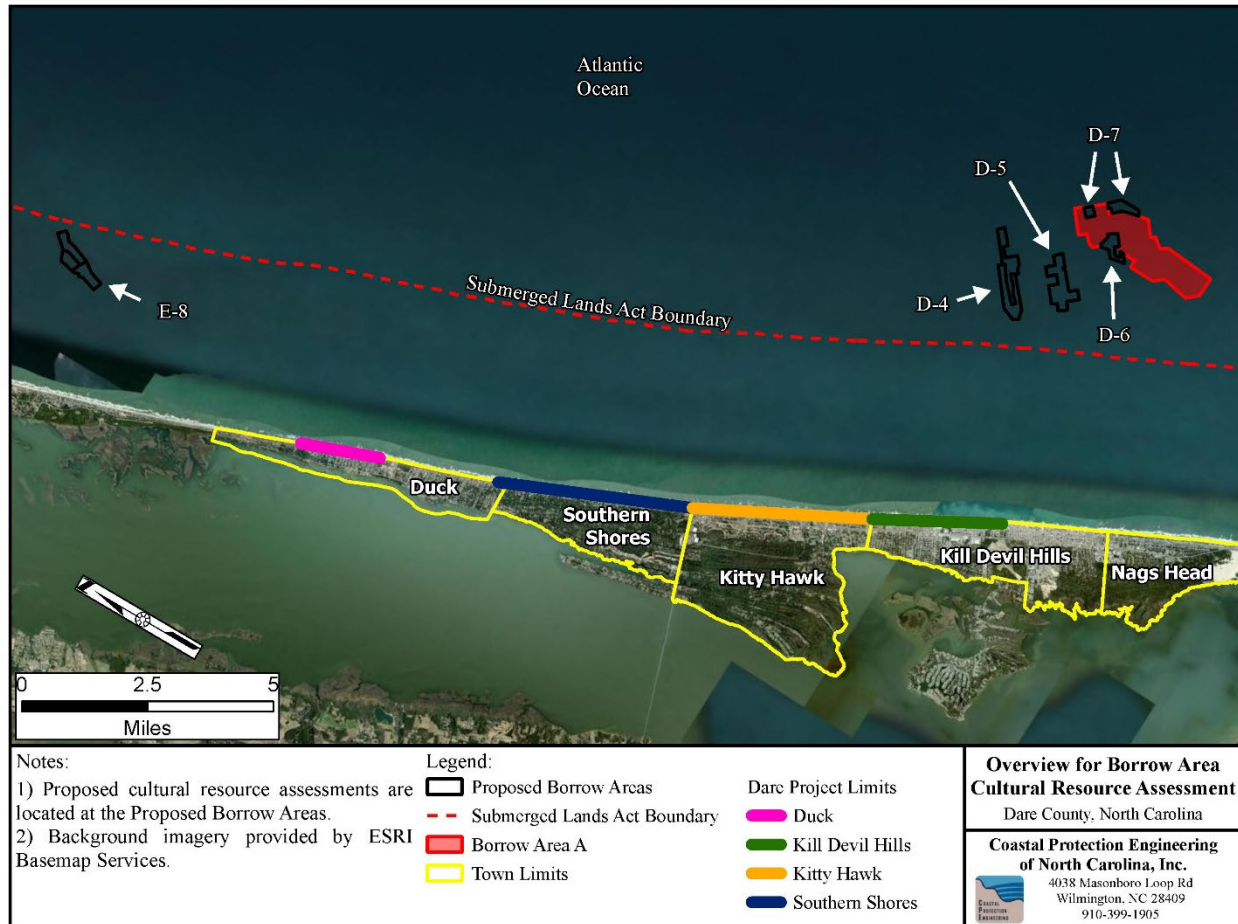


Figure 1. Overview Map of Proposed Borrow Areas for Cultural Resource Assessment

TASK 3: Engineering and Design

In 2021, CPE completed a detailed engineering design report for the Town of Southern Shores Beach Management Program. The recommended beach fill design differed north and south of the beach access at Fourth Avenue (station -153+05). The recommended design for the southern segment, which includes 15,305 feet of the TOWN's oceanfront, included placement of beach fill at the design berm elevation of +6 ft. NAVD88 to provide a reasonable level of storm damage reduction and additional fill to mitigate the potential for hotspot erosion in the central 3,900 feet of the project area between station -70+00 and station -110+00. The recommended design for the southern segment also included advanced fill to maintain the integrity of the project design over a 5-year renourishment interval. The recommended design for the northern segment, which spans

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4,319 feet from Fourth Avenue to the Northern TOWN boundary, included the placement of beach fill to provide a sufficient useable beach width to achieve the TOWN's goal of maintaining a healthy beach that provides sufficient useable beach and supports valuable shorebird and sea turtle nesting habitat. Given the fact that the volumetric changes observed north of Fourth Avenue have been accretional since 2013, advanced fill was not included in the beach fill design along the northern segment.

In preparation of the anticipated 2027 project, CPE will evaluate design adaptations aimed at improving the overall project performance of the beach nourishment project and provide an engineering report describing the recommendations. The design adaptations will focus on three (3) primary aspects to include: 1) continue to evaluate the project performance monitoring data to determine adequate advanced fill quantities for the proposed 2027 project in order to achieve project goals, 2) evaluate the optimum quantity needed along the southern three (3) miles of the TOWN and whether there is any need for advanced fill to be placed along the northern 0.8 miles, and 3) evaluate the feasibility of extending the nourishment interval from 5 years to 6 or 7 years. Pending approval of these recommendations, CPE will incorporate the updated design into the permit applications described under Task 1.

Beach Profile Data: CPE has conducted annual monitoring surveys of the TOWN's oceanfront beach since 2017. CPE is currently under contract with the Town of Southern Shores to collect beach profile data in June 2025. These data will be used to evaluate the design adaptations described in the previous paragraph.

Sub-Task 3A: Beach Fill Performance Evaluation and Modeling

The re-nourishment project design will be based on a detailed analysis of the performance of the 2017 and 2022/2023 beach re-nourishment project performance as well as analysis of sediment transport and morphological changes evaluated through the use of numerical modeling. It is well known that any beach fill placed along a shoreline will be subject to gradual loss of material due to background erosion, i.e., the observed historic rate of shoreline change in the project area, as well as diffusion losses due to the alongshore spreading of the fill material out of the placement area.

In order to evaluate beach nourishment design alternatives including advanced fill densities, optimal fill configuration, and varying fill densities to achieve a longer nourishment interval, a variety of tools and methods will be employed. CPE engineers will review available oceanographic data, meteorological data, topographic/bathymetric data and geotechnical data, incorporating more recent data into the data previously reviewed to design the 2017 and 2022/2023 projects. Where applicable, updates to the descriptions of the physical characteristics of the project area will be provided in terms of tides, winds, waves, surge, extreme storms, and relative sea level rise. CPE will also conduct a detailed volumetric change analysis comparing trends observed since the 2023 project was constructed with the performance of the 2017 project. This will include evaluation of how modifications to the fill configuration for the 2022/2023 project may have improved project performance.

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In 2021, CPE conducted a comprehensive numerical modeling study to support the four northern Dare County Towns in evaluating project-specific engineering alternatives and identifying cost-saving opportunities through a coordinated regional approach. The Delft3D modeling suite was utilized to simulate wave dynamics, hydrodynamics, and morphological changes. The model incorporated existing bathymetric and topographic data and was calibrated to wave measurements from the USACE Field Research Facility (FRF). A regional wave model domain was developed, which extended from the northern boundary of the Town of Duck through the southern end of the Kill Devil Hills project area. To capture site-specific conditions, higher-resolution local flow and wave grids were developed for each individual project area. The calibrated 2021 model was then used to refine the design of the 2022/2023 re-nourishment project for each Town and optimize performance.

As part of this Scope of Professional Services, CPE proposes to develop a continuous Delft3D model domain encompassing the Southern Shores, Kitty Hawk, and Kill Devil Hills project areas. This regional modeling approach builds on previous efforts and allows for a continuous representation of the active beach system across all three Towns. The integrated domain will support the evaluation of sediment transport dynamics, fill performance, and diffusion losses both within and between the three subsections of the project area. By simulating the interconnected behavior of the entire shoreline, this approach will help inform optimal fill configurations, identify opportunities for regional coordination, and support the development of long-term, resilient nourishment strategies for each Town.

CPE will perform updated wave, flow, and morphology calibrations using the newly developed extended Delft3D model grid that encompasses the contiguous shoreline of Southern Shores, Kitty Hawk, and Kill Devil Hills. The wave and hydrodynamic models will be calibrated using available data from the USACE FRF. The morphology model will be refined to reflect current trends observed across the entire project area. A representative 1- to 2-year period will be selected based on the latest beach profile data to evaluate modeled morphological changes against measured conditions, and model parameters will be adjusted as needed to improve alignment with observed trends.

Once the wave, hydrodynamic, and morphology models are calibrated, we will update the model using the most recently collected 2025 topo-bathymetric data and sediment characteristics to support the evaluation of up to four (4) beach re-nourishment design configurations. These simulations will inform design modifications to the fill configuration to enhance project performance, while also aiding in the evaluation of recommended advanced fill densities, and the assessment of the feasibility of extending the re-nourishment interval from 5 years to 6 or 7 years. Each alternative will be simulated in Delft3D over short-term (1- to 2-years) and long-term (5- to 7-year) periods, and the results will be evaluated based on annual volumetric losses within the project area.

CPE will also utilize a one-line shoreline evolution model, such as GENCADE (developed by the USACE) or ShorelineS (developed by Deltares), to evaluate the feasibility of extending the

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renourishment interval from 5 years to 6 or 7 years. One-line models are well-suited for assessing alongshore spreading of placed material, particularly in areas where shore-parallel bathymetry influences longshore sediment transport. This approach will help quantify potential diffusion losses and complement the volumetric analysis that will be gained through the use of the Delft3D model to assess fill performance for the Southern Shores project area. The results will support refinement of the nourishment design and help inform the use of increased fill densities aimed at supporting longer nourishment intervals of 6 or 7 years across the three Towns (Southern Shores, Kitty Hawk and Kill Devil Hills).

CPE also proposes to perform a comprehensive, long-term analysis of wave conditions and potential sediment transport in the study area. This analysis will integrate the Delft3D-WAVE model with the Coastal Engineering Research Center (CERC) sediment transport formulation, as detailed in the USACE Shore Protection Manual (1984). The effort will use the existing “working” wave model developed for the Southern Shores project area, applying the CERC formula, which estimates longshore sediment transport proportional to the longshore energy flux. The analysis will provide longshore sediment transport rates and directions. The analysis will evaluate the past 20- to 30-year historical period to characterize broader sediment transport patterns and will then compare trends observed between the 2017 and 2023 projects, as well as trends observed since the 2023 project was completed. This comparison will provide insight into how recent fill configurations have performed relative to the underlying transport conditions and will inform the design of the proposed 2027 project.

Engineering Report: CPE will prepare an engineering report that documents the process employed to evaluate the various design adaptations. The report will clearly establish the project goals and objectives, provide a brief project history and describe the project location. The report will also provide information on data used in the design process such as wave, water level, meteorological, topographic/bathymetric, and geotechnical data. The report will also provide a description of the physical characteristics of the project area in terms of tides, winds, waves, surge, extreme storms, and relative sea level rise. The report will provide methodology and results for each of the various design analyses conducted. The report will also provide a detailed description of the various beach fill options considered and provide justification for the recommended design configuration. The report will also include basic information on the borrow areas recommended for use.

CPE will prepare a comprehensive modeling appendix that will include details on the various model configurations and input parameters used. The modeling appendix will provide details on the calibration process, simulation scenario details, shoreline evolution model outputs, and supporting figures and plots illustrating model performance and comparative results across alternatives. This appendix will support and complement the discussion of alternatives that will be provided in the main engineering report.

Sub-Task 3B: Engineering Plans

Once CPE has completed the analyses of the various design adaptations, a set of engineering plans will be developed. The plans will include detailed plan view and cross section view drawings of both the borrow areas and the proposed beach fill, including allowable dredge cut depths, berm

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elevation, berm width, and project extent. These plans will be incorporated into the permitting applications discussed under Task 1.

**EXHIBIT B:
BREAKDOWN OF COSTS
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Table 1. Breakdown of the total cost of the Design and Environmental Permitting Services for the proposed 2027 Beach Nourishment Project.

TASK	DESCRIPTION	Cost
1	Environmental Documentation and Permitting	\$74,991.75
1A	Permitting	\$21,935.00
1B	Environmental Documentation	\$44,371.75
1C	BOEM Lease Request	\$8,685.00
2	Borrow Area Permitting Support Services*	\$101,533.98
2A	Bathymetric Survey and Sediment Sampling of Borrow Area A	\$15,957.28
2B	Borrow Area A Surface Sample Sediment Analysis (Optional)	\$5,127.50
2C	Borrow Area A Supplemental Vibracores (Optional)	TBD
2D	Cultural Resource Assessment	\$80,449.20
3	Engineering and Design	\$140,444.25
3A	Beach Fill Performance Evaluation and Modeling	\$122,594.25
3B	Engineering Plans for Permit Applications	\$17,850.00
TOTAL BASE COST (EXCLUDES OPTION ITEMS)*		\$311,842.48
TOTAL COST OF OPTIONAL ITEMS (SUB-TASKS 2B AND 2C)*		TBD
TOTAL COST (INCLUDING OPTIONAL ITEMS)*		\$316,969.98

*Cost does not include Sub-Task 2C as cost for Sub-Task 2C is TBD.

Some costs associated with Task 1, Task 2, and Task 3 are being cost shared between the Towns of Duck, Southern Shores, Kitty Hawk, and Kill Devil Hills. In the event that any of the Towns decide not to move forward with the design and permitting of the project, the other 3 Towns' costs would necessarily increase; however, at this time, all four Towns have indicated their desire to move forward with design and permitting for the proposed 2027 project.

As stated in Exhibit A – Scope of Professional Services, Tasks 2B and 2C are optional items that may be required based on the results of Sub-Tasks 2A, 2B, and coordination with the NC Division of Coastal Management. Prior to initiating efforts included under these optional sub-tasks, CPE will provide a recommendation to the TOWN regarding the need to proceed and seek written authorization from the TOWN prior to proceeding.

**EXHIBIT C:
LIST OF DELIVERABLES
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The following items have been identified as deliverables for the completion of this scope of work.

- Monthly progress reports;
- Major CAMA Permit Application;
- Dept. of the Army Permit Application;
- Final Environmental Assessment;
- Final Supplemental Essential Fish Habitat Assessment;
- BOEM Lease Request Packet;
- Letter Report regarding Borrow Area A Infilling
- Borrow Area Design Report
- Cultural Resource Assessment Report;
- Engineering Report; and
- Permit Drawings

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

Monthly Progress Reports: CPE will provide the TOWN with a 1 page, summary of the project status via e-mail approximately every 30 days during the course of the anticipated 12-month contract period. The letter will describe activities completed throughout the month and update the anticipated schedule of milestones as appropriate.

Major CAMA Permit Application: The Scope of Work includes the development and submittal of the complete Major CAMA permit application directly to the NC Division of Coastal Management. Barring any unforeseen circumstances, the Major CAMA Permit Application will be provided along with other final deliverables within 8 months following written authorization to proceed.

Dept. of the Army Permit Application: The Scope of Work includes the development and submittal of the Dept. of the Army Individual Permit Application directly to the U.S. Army Corps of Engineers. Barring any unforeseen circumstances, the Dept. of the Army Individual Permit Application will be provided along with other final deliverables within 8 months following written authorization to proceed.

Final Environmental Assessment (EA): An EA under NEPA is a concise public document that provides sufficient evidence and analysis for determining whether the U. S. Army Corps of Engineers should issue a Finding of No Significant Environmental Impact (FONSI) or prepare an Environmental Impact Statement (EIS). It is designed to help public officials make decisions that are based on an understanding of the human and physical environmental consequences of the

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proposed project and take actions, in the location and design of the project, that protect, restore and enhance the environment. Barring any unforeseen circumstances, the EA will be provided along with other final deliverables within 8 months following written authorization to proceed.

Final Essential Fish Habitat (EFH) Assessment: A supplement to the “Batched” EFH submitted to NMFS for the 2022 re-nourishment project will be prepared with additional information, newly designated EFH constituents (should they exist), and updated biological data relevant to the project area. Assuming new borrow area(s) will be included within the proposed project, information on those sites will also be included. The “Batched” EFH assessment will be submitted by CPE on behalf of the four Towns to the USACE and BOEM. The USACE and BOEM will then enter consultation with NMFS Habitat Conservation Division (HCD) who will review the document to ensure it is comprehensive and complete. Barring any unforeseen circumstances, the supplement to the Batched EFH will be provided along with other final deliverables within 8 months following written authorization to proceed.

BOEM Lease Request Packet: The Scope of Work includes the development and submittal of a request to BOEM for a new non-competitive negotiated lease agreement that will allow for the use of borrow material from within federal waters. Barring any unforeseen circumstances, the BOEM Lease Request Packet will be provided within 8 months following written authorization to proceed.

Letter Report regarding Borrow Area A Infilling: A brief letter report detailing the results of Sub-Task 2A will be prepared and submitted to both the TOWN and NC DCM. If based on analysis of the data collected and coordination with NC DCM, optional Sub-Tasks 2B and 2C are needed, the results of these supplemental investigations will also be incorporated into the letter report. The report will provide graphics sufficient to illustrate changes within the borrow area. As an appendix to this letter report, a signed and sealed survey report will also be provided. The survey report will include a description of the methodology and equipment used, a survey chart of the borrow area with contours, and survey notes. Furthermore, if optional Sub-Tasks 2B and 2C are needed, the sediment analysis data, logs, photographs, etc., will be included as an appendix to the letter report. Barring any unforeseen circumstances, the letter report will be provided within 6 months following written authorization to proceed.

Cultural Resource Assessment Report: A report detailing the cultural resource assessment will be provided as a deliverable. The report will be provided to the NC DCM, NC DNCR, the USACE, and BOEM. The report will include methodology, historical background information, previous investigations, a description of the findings as well as conclusions and recommendations. Barring any unforeseen circumstances, the letter report will be provided within 6 months following written authorization to proceed.

**EXHIBIT C:
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Engineering Report: An engineering report will be provided that documents the processes employed to evaluate the various design adaptations. The report will provide information on data used in the design process and a description of the physical characteristics of the project area in terms of tides, winds, waves, surge, extreme storms, and relative sea level rise. The report will provide methodology and results for each of the various design analyses conducted. The report will also provide a detailed description of the various beach fill options considered and provide justification for the recommended design configuration. The report will also include information on the borrow areas recommended for use. Barring any unforeseen circumstances, the engineering design report will be provided within 9 months following written authorization to proceed.

Permit Drawings: A set of engineering plans will be developed that include detailed plan view and cross section view drawings of both the borrow areas and the proposed beach fill, including allowable dredge cut depths, berm elevation, berm width, and project extent. These plans will be incorporated into the permitting applications discussed under Task 1. Barring any unforeseen circumstances, the permit drawings will be provided within 8 months following written authorization to proceed.



AGENDA ITEM SUMMARY

Item #5

MEETING DATE: August 5, 2025

ITEM TITLE: Financing Ladder Truck

ITEM SUMMARY:

This is a required public hearing in accordance with §160A-20. Security interests.

(a) Purchase. – A unit of local government may purchase, or finance or refinance the purchase of, real or personal property by installment contracts that create in some or all of the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

and;

(g) Public Hearing. – Before entering into a contract under this section involving real property, a unit of local government shall hold a public hearing on the contract. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

The public hearing is an opportunity for the public to comment on the Towns financing of a 2022 E-One fire ladder truck in the amount of \$665,840.71. This equipment is currently titled to the SSVFD and will transfer to the Town as part of the transition of the fire department. The Loan is currently held by Community First National Bank and will remain there after the transfer. The remaining amount on the original loan is \$665,840.71 and is financed with a 4.948% interest rate with six remaining payments of \$125,269.84.

STAFF RECOMMENDATION AND REQUESTED ACTION:

After conducting the public hearing, a motion to approve the Town Manager to execute all required documents in order to finance the ladder truck.

MASTER EQUIPMENT LEASE PURCHASE AGREEMENT

LESSEE: Town of Southern Shores

This Master Equipment Lease Purchase Agreement, including all exhibits and schedules hereto whether currently in existence or hereafter executed (the "Agreement"), dated as of 7/18/2025, and entered into between Community First National Bank 215 S. Seth Child Rd, Manhattan, KS 66502 ("Lessor"), and Town of Southern Shores, 5375 North Virginia Dare Trail, Southern Shores, NC 27949 a body corporate and politic duly organized and existing under the laws of the State of North Carolina ("Lessee");

RECITALS

WHEREAS, Lessee desires to lease from Lessor certain equipment described in the schedules to this Agreement, substantially in the form of Exhibit A hereto, that are executed from time to time by the parties hereto (such schedules are hereby incorporated herein and are hereinafter collectively referred to as the "Schedules", and the items of equipment leased to Lessee hereunder, together with all substitutions, proceeds, replacement parts, repairs, additions, attachments, accessories and replacements thereto, thereof or therefore, are hereinafter collectively referred to as the "Equipment") subject to the terms and conditions of and for the purposes set forth in this Agreement.

WHEREAS, the relationship between the parties shall be a continuing one and items of equipment may be added to or deleted from the Equipment from time to time by execution of additional Schedules by the parties hereto and as otherwise provided herein.

WHEREAS, Lessee is authorized under the constitution and laws of the State to enter into this Agreement for the purposes set forth herein.

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I. REPRESENTATIONS, WARRANTIES AND COVENANTS OF LESSEE

Section 1.01. Lessee represents, covenants and warrants, for the benefit of Lessor and its assignees, as follows:

- (a) Lessee is a public body, corporate and politic, duly organized and existing under the Constitution and laws of the State.
- (b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and affect its existence as a body corporate and politic.
- (c) Lessee is a political subdivision of the State within the meaning of Section 103(a) of the Code or a constituted authority authorized to issue obligations on behalf of a state or local governmental unit within the meaning of the regulations promulgated pursuant to said Section of the Code.
- (d) Lessee has full power and authority under the Constitution and laws of the State to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations hereunder.
- (e) Lessee has duly authorized the execution and delivery of this Agreement by proper action by its governing body at a meeting duly called, regularly convened and attended throughout by the requisite majority of the members thereof, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement.
- (f) Lessee has complied or will comply with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Equipment.
- (g) During the Lease Term, the Equipment will be used by Lessee only for the purpose of performing one or more essential governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than Lessee.
- (h) During the Lease Term, Lessee will annually provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be reasonably requested by Lessor.
- (i) The Equipment will have a useful life in the hands of Lessee that is substantially in excess of the Original Term and all Renewal Terms.
- (j) The Equipment is, and during the Lease Term will remain personal property and when subjected to use by the Lessee, will not be or become fixtures.
- (k) The Equipment is essential to the function of the Lessee and the services provided to its citizens, and will be used throughout the period that this Agreement is in force for the purpose of performing one or more governmental or proprietary functions consistent with the permissible scope of its authority.
- (l) During the term of this Agreement, Lessee will not dispose of or sell any part of the Equipment.
- (m) Lessee has not terminated a lease, rental agreement, installment purchase contract, or any other such agreement in the past five (5) years as a result of insufficient funds being appropriated for payments due under such an agreement.
- (n) This Agreement constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.
- (o) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.
- (p) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Rental Payments scheduled to come due during the current fiscal year and to meet its other obligations under this Agreement for the current fiscal year, and such funds have not been expended for other purposes.
- (q) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefore, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or materially adversely affect the financial condition or properties of Lessee.
- (r) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement or in connection with the carrying out by Lessee of its obligations hereunder have been obtained.
- (s) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance on any assets of Lessee or the Equipment pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as herein provided.

ARTICLE II. DEFINITIONS

Section 2.01. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Master Equipment Lease Purchase Agreement, including the Schedules and any other schedule, exhibit or escrow agreement made a part hereof by the parties hereto, whether currently in existence or hereafter executed, as the same may be supplemented or amended from time to time in accordance with the terms hereof.

"Code" means the Internal Revenue Code of 1986, as amended, and the United States Treasury Regulations in effect thereunder.

"Commencement Date" means, with respect to any Schedule, the date when the Lease Term of this Agreement with respect to that Schedule and Lessee's obligation to pay rent under that Schedule commence, which date will be the earlier of (i) the date of the Agreement, or (ii) the date on which sufficient moneys to purchase the Equipment are deposited for that purpose with an Escrow Agent.

"Equipment" means the property described in the Schedules and all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto. Whenever reference is made in this Agreement to Equipment listed in a Schedule, that reference shall be deemed to include all replacements, repairs, restorations, modifications and improvements of or to that Equipment.

"Event of Default" means, with respect to any Lease, an Event of Default described in Section 10.01.

"Escrow Agreement" means, with respect to a given Schedule, an escrow agreement in form and substance satisfactory to Lessor, between Lessee, Lessor and an escrow agent relating to the acquisition fund created thereunder.

"Lease" means, at any time, (i) if none of Lessor's interest in, to and under any Schedule has been assigned pursuant to Section 9.01, or if all of Lessor's interest in, to and under this Agreement and all Schedules have been assigned to the same assignee without any reassignment, this Agreement, or (ii) if Lessor's interest in, to and under any Schedule or Schedules has been assigned or reassigned pursuant to Section 9.01, all Schedules that have the same Lessor and this Agreement as it relates to those Schedules and the Equipment listed therein, which shall constitute a separate single lease relating to that Equipment.

"Lease Term" means, with respect to any Lease, the Original Term and all Renewal Terms of that Lease.

"Lessee" means the entity which is described in the first paragraph of this Agreement, its successors and assigns.

"Lessor" means, with respect to each Schedule and the Lease of which that Schedule is a part, (i) if Lessor's interest in, to and under that Schedule has not been assigned pursuant to Section 9.01, the entity described as such in the first paragraph of this Agreement or its successor, or (ii) if Lessor's interest in, to and under that Schedule has been assigned pursuant to Section 9.01, the assignee thereof or its successor.

"Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

"Original Term" means, with respect to any Lease, the period from the first Commencement Date for any Schedule under that Lease until the end of the fiscal year of Lessee in effect at that Commencement Date.

"Purchase Option Price" means, with respect to the Equipment listed on any Schedule, the amount set forth in that Schedule as the Purchase Option Price for that Equipment.

"Renewal Terms" means, with respect to any Lease, the automatic renewal terms of that Lease, as provided for in Article III of this Agreement, each having a duration of one year and a term co-extensive with the Lessee's fiscal year except the last of such automatic renewal terms which shall end on the due date of the last Rental Payment set forth in the Schedule.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to Section 4.02.

"State" means the state in which Lessee is located.

"Vendor" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom Lessee purchased or is purchasing the Equipment.

ARTICLE III. LEASE TERM

Section 3.01. Lease of Equipment. Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment listed in each Schedule in accordance with this Agreement and that Schedule for the Lease Term for the Lease of which that Schedule is a part. The Lease Term for each Lease may be continued at the end of the Original Term or any Renewal Term for an additional Renewal Term; provided, however, that at the end of the Original Term and at the end of each Renewal Term, Lessee shall be deemed to have continued that Lease for the next Renewal Term unless Lessee shall have terminated that Lease pursuant to **Section 4.05** or **Section 5.04**. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the Schedules. Lessor hereby covenants to provide Lessee during the Lease Term with quiet use and enjoyment of the Equipment, and Lessee shall during the Lease Term peaceably and quietly have and hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement.

Section 3.02. Continuation of Lease Term. Lessee currently intends, subject to **Section 4.05**, to continue the Lease Term for each Lease through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Lease Term for each Lease can be obtained. The responsible financial officer of Lessee shall do all things lawfully within his or her power to obtain and maintain funds from which the Rental Payments may be made, including making provision for the Rental Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend a Lease for any Renewal Term is solely within the discretion of the then current governing body of Lessee.

Section 3.03. Return of Equipment on Termination. Upon expiration or earlier termination of any Schedule under any provision of this Agreement at a time when Lessee does not exercise its option to purchase the Equipment described in that Schedule under the provisions of this Agreement, Lessee shall deliver, at Lessee's expense, the Equipment described in that Schedule to Lessor in the same condition as existed at the Commencement Date, ordinary wear and tear expected, packaged or otherwise prepared in a manner suitable by shipment by truck or rail common carrier at a location specified by Lessor.

Section 3.04. Conditions to Lessor's Performance under Schedules. As a prerequisite to the performance by Lessor of any of its obligations pursuant to the execution and delivery of any Schedule, Lessee shall deliver to Lessor the following:

- (a) A Lessee Resolution executed by the Clerk or Secretary or other comparable officer of Lessee, in substantially the form attached hereto as Exhibit B, completed to the satisfaction of Lessor;
- (b) An Opinion of Counsel to Lessee in substantially the form attached hereto as Exhibit C respecting such Schedule and otherwise satisfactory to Lessor;
- (c) All documents, including financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time;
- (d) Such other items, if any, as are set forth in such Schedule or are reasonably required by Lessor.

This Agreement is not a commitment by Lessor to enter into any Schedule not currently in existence, and nothing in this Agreement shall be construed to impose any obligation upon Lessor to enter into any proposed Schedule, it being understood that whether Lessor enters into any proposed Schedule shall be a decision solely within Lessor's discretion.

Lessee will cooperate with Lessor in Lessor's review of any proposed Schedule. Without limiting the foregoing, Lessee will provide Lessor with any documentation or information Lessor may request in connection with Lessor's review of any proposed Schedule. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use and location and documentation or information concerning the financial status of Lessee and other matters related to Lessee.

ARTICLE IV. RENTAL PAYMENTS

Section 4.01. Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee.

Section 4.02. Payment of Rental Payments. Lessee shall pay Rental Payments, from any and all legally available funds, in lawful money of the United States of America, exclusively to Lessor or, in the event of assignment by Lessor, to its assignee, in the amounts and on the dates set forth in each Schedule. Rental Payments shall be in consideration for Lessee's use of the Equipment during the applicable year in which such payments are due. The Rental Payments will be payable without notice or demand at the office of Lessor (or such other place as Lessor may from time to time designate in writing). If any Rental Payment or other sum payable under any Schedule is not paid when due, Lessee shall pay to Lessor accrued interest on such delinquent amount from the date due thereof until paid at the lesser of 18% or the maximum rate allowed by law. In the event that it is determined that any of the interest components of Rental Payments may not be excluded from gross income for purposes of federal income taxation, Lessee agrees to pay to Lessor promptly after any such determination and on the date of each Rental Payment thereafter an additional amount determined by Lessor to compensate Lessor for the loss of such excludability (including without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive absent manifest error.

Section 4.03. Interest and Principal Components. A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal. Each Schedule will set forth the interest component and the principal component of each Rental Payment during the Lease Term.

Section 4.04. Rental Payments to be Unconditional. The obligations of Lessee to make payment of the Rental Payments required under this Article IV and other sections hereof, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, except as expressly provided under this Agreement. Notwithstanding any dispute between Lessee and Lessor, any Vendor or any other dispute between Lessee and Lessor, any Vendor or any other person, Lessee shall make all payments of Rental Payments when due and shall not withhold any Rental Payments pending final resolution of such dispute, nor shall Lessee assert any right of set-off or counterclaim against its obligation to make such payments required under this Agreement. Lessee's obligation to make Rental Payments during the Original Term or the then-current Renewal Term for each Schedule shall not be abated through accident or unforeseen circumstances.

Section 4.05. Non appropriation. Lessee is obligated only to pay such Rental Payments under this Agreement (and any additional amounts due hereunder, if applicable) as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. Should Lessee fail to budget, appropriate or otherwise make available funds to pay Rental Payments under a Lease following the then current Original Term or Renewal Term, that Lease shall be deemed terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver written notice to Lessor of such termination at least 60 days prior to the end of the then current Original Term or Renewal Term, but failure to give such written notice shall not extend the term beyond such Original Term or Renewal Term.

ARTICLE V. TITLE TO EQUIPMENT; SECURITY INTEREST; OPTION TO PURCHASE

Section 5.01. Title to the Equipment. Upon acceptance of the Equipment by Lessee, title to the Equipment and any and all additions, repairs, replacements or modifications shall vest in Lessee, subject to the rights of Lessor under this Agreement; provided that title to the Equipment that is subject to any Lease shall thereafter immediately and without any action by Lessee vest in Lessor, and Lessee shall immediately surrender possession of that Equipment to Lessor, upon (a) any termination of that Lease other than termination pursuant to Section 5.04, or (b) the occurrence of an Event of Default with respect to that Lease. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee shall, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer.

Section 5.02. Security Interest. To secure the payment of all Lessee's obligations under this Agreement, Lessee grants to Lessor a security interest constituting a first lien on (i) the Equipment and on all additions, attachments, accessions, that are considered to be an integral part of the equipment, and substitutions thereto, and on any proceeds there from, and (ii) the acquisition fund established under any Escrow Agreement entered into in connection therewith. Lessee agrees to execute such additional documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment. Lessee hereby authorizes the filing of financing statements under the Uniform Commercial Code in connection with the security interest granted hereunder.

Section 5.03. Personal Property. Lessor and Lessee agree that the Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Upon the request of Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

Section 5.04. Option to Purchase. Lessee shall have the option to purchase Lessor's interest in all (but not less than all) of the Equipment described in any Schedule, upon giving written notice to Lessor at least 60 (but not more than 180) days before the date of purchase, at the following times and upon the following terms:

- (a) On the date of the last Rental Payment set forth in that Schedule (assuming this Agreement is renewed at the end of the Original Term and each Renewal Term), if the Agreement is still in effect on such day, upon payment in full to Lessor of the Rental Payments and all other amounts then due under that Schedule plus One Dollar;
- (b) On the last day of the Original Term or any Renewal Term then in effect, upon payment in full to Lessor of the Rental Payments and all other amounts then due under that Schedule plus the then applicable Purchase Option Price set forth in that Schedule; or
- (c) In the event of substantial damage to or destruction or condemnation of substantially all of the Equipment listed in that Schedule on the day specified in Lessee's written notice to Lessor of its exercise of the purchase option upon payment in full to Lessor of the Rental Payments and all other amounts then due under that Schedule, including, without limitation, interest accrued to the date of payment, plus the then applicable Purchase Option Price set forth in that Schedule.

ARTICLE VI. DELIVERY, MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES

Section 6.01. Delivery, Installation and Acceptance of Equipment. Lessee shall order the Equipment, cause the Equipment to be delivered and installed at the locations specified in the Schedules and pay any and all delivery and installation costs in connection therewith. When the Equipment listed in any Schedule has been delivered and installed, Lessee shall immediately accept such Equipment and evidence said acceptance by executing and delivering to Lessor an Acceptance Certificate in the form attached hereto as Exhibit D.

Section 6.02. Location; Inspection. Once installed, no item of the Equipment will be moved from the location specified for it in the Schedule on which that item is listed without Lessor's consent, which consent shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

Section 6.03. Maintenance of Equipment by Lessee. Lessee agrees that at all times during the Lease Term Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition, and that Lessee will from time to time make or cause to be made all necessary and proper repairs, replacements and renewals. Lessor shall have no responsibility in any of these matters, or for the making of improvements or additions to the Equipment. Lessee shall not make material modifications to the Equipment without the prior consent of Lessor.

Section 6.04. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment free of all liens, charges and encumbrances except those created by this Agreement. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all taxes presently assessed and levied with respect to personal property. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), Lessee will pay, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment and any equipment or other property acquired by Lessee in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment; provided that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as have accrued during the Lease Term. Lessee will take no action that will cause the interest portion of any Rental payment to become includable in gross income of the recipient for purposes of federal income taxation under the Code, and Lessee will take, and will cause its officers, employees and agents to take, all affirmative action legally within its power to prevent such interest from being includable in gross income for purposes of federal income taxation under the Code. Lessee acknowledges that Lessor's yield with respect to this Agreement is dependent upon the interest component of each Rental Payment being excluded from Lessor's income pursuant to the Code.

Section 6.05. Provisions Regarding Insurance. At its own expense, Lessee shall maintain (a) casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State, and any other risks reasonably required by Lessor, in an amount at least equal to the replacement cost of the Equipment, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b); provided further that, if Lessor provides such consent Lessee shall provide to Lessor information with respect to such self-insurance program as Lessor may request from time to time. All insurance proceeds from casualty losses shall be payable as hereinafter provided. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term. All such casualty and liability insurance shall be with insurers that are acceptable to Lessor, shall name Lessor as a loss payee and an additional insured, respectively, and shall contain a provision to the effect that such insurance shall not be canceled or modified materially without first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification. All such casualty insurance shall contain a provision making any losses payable to Lessee and Lessor as their respective interests may appear.

Section 6.06. Advances. In the event Lessee shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Equipment in good repair and operating condition, Lessor may (but shall be under no obligation to) purchase the required insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefore by Lessor shall constitute additional rent for the then-current Original Term or Renewal Term, and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date advanced until paid at the rate of 18% per annum or the maximum interest rate permitted by law, whichever is less.

ARTICLE VII. DAMAGE, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS

Section 7.01. Risk of Loss. Lessee is responsible for the entire risk of loss of or damage or destruction to the Equipment. No such loss, damage or destruction shall relieve Lessee of any obligation under this Agreement or any Lease.

Section 7.02. Damage, Destruction and Condemnation. If (a) the Equipment listed on any Schedule or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt replacement, repair, restoration, modification or improvement of that Equipment, unless Lessee shall have exercised its option to purchase that Equipment pursuant to Section 5.04. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

Section 7.03. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement referred to in Section 7.02, Lessee shall either complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds, unless Lessee, pursuant to Section 5.04, purchases Lessor's interest in the Equipment destroyed, damaged or taken and any other Equipment listed in the same Schedule. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after purchasing Lessor's interest in the Equipment shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefore from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

ARTICLE VIII. DISCLAIMER OF WARRANTIES; VENDOR'S WARRANTIES; USE OF THE EQUIPMENT

Section 8.01. Disclaimer of Warranties. LESSEE HAS SELECTED THE EQUIPMENT AND THE VENDORS. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY OR REPRESENTATION WITH RESPECT THERETO. In no event shall Lessor be liable for an incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any item or products or service provided for in this Agreement.

Section 8.02. Vendor's Warranties. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties of the Equipment, which Lessor may have against the Vendor of the Equipment. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against Lessor, nor shall such matter have any effect, whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made no representation or warranties whatsoever as to the existence or availability of such warranties of the Vendor of the Equipment.

Section 8.03. Use of the Equipment. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with all laws of the jurisdictions in which its operations involving any item of Equipment may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Equipment; provided, however, that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the title of Lessor in and to any of the items of the Equipment or its interest or rights under this Agreement.

Section 8.04. Essential Nature of the Equipment. Lessee confirms and affirms that the Equipment is essential to the function of Lessee and the services provided to its citizens, that there is an immediate need for the Equipment which is not temporary or expected to diminish in the foreseeable future, and that Lessee will use substantially all the Equipment for the purpose of performing one or more governmental or proprietary functions consistent with the permissible scope of its authority.

ARTICLE IX. ASSIGNMENT, SUBLEASING, INDEMNIFICATION, MORTGAGING AND SELLING

Section 9.01. Assignment by Lessor. Lessor's interest in, to, and under this Agreement; any Lease and the Equipment may be assigned and reassigned in whole or in part to one or more assignees by Lessor at any time subsequent to its execution. Lessee hereby agrees to maintain a written record of each such assignment in form necessary to comply with Section 149(a) of the Code. No such assignment shall be binding on Lessee until it has received written notice from Lessor of the assignment disclosing the name and address of the assignee. Lessee agrees to execute all documents, including chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interests in the Equipment and in this Agreement. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim, defense, set-off or other right Lessee may from time to time have against Lessor.

Section 9.02. Assignment and Subleasing by Lessee. None of Lessee's interest in, to and under this Agreement and in the Equipment may be sold, assigned, subleased, pledged or otherwise encumbered by Lessee without the prior written consent of Lessor.

Section 9.03. Release and Indemnification Covenants. To the extent permitted by law, Lessee shall indemnify, protect, hold harmless, save and keep harmless Lessor from and against any and all liabilities, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and all expenses in connection therewith (including, without limitation, counsel fees and expenses, penalties connected therewith imposed on interest received) arising out of or as (a) result of the entering into of this Agreement, (b) the ownership of any item of the Equipment, (c) the manufacture, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment, (d) or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (e) the breach of any covenant herein or any material misrepresentation contained herein. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

ARTICLE X. EVENTS OF DEFAULT AND REMEDIES

Section 10.01. Events of Default Defined. Subject to the provisions of Section 4.05, any of the following events shall constitute an "Event of Default" under any Lease:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid under that Lease at the time specified in that Lease;
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed under that Lease, other than as referred to in subparagraph (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;
- (c) Any statement, representation or warranty made by Lessee in or pursuant to that Lease or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- (d) Any provision of that Lease shall at any time for any reason cease to be valid and binding on Lessee, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee shall deny that it has any further liability or obligation under that Lease.
- (e) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or
- (f) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days.

Section 10.02. Remedies on Default. Whenever any Event of Default under any Lease exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) By written notice to Lessee, declare all Rental Payments and other amounts payable by Lessee under that Lease to the end of the then current Original Term or Renewal Term to be due;
- (b) With or without terminating that Lease, Lessor may, upon 5 days written notice to Lessee, enter the premises where any Equipment that is subject to that Lease is located and retake possession of that Equipment or require Lessee at Lessee's expense to promptly return any or all of the Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease the Equipment or, for the account of Lessee, sublease the Equipment, continuing to hold Lessee liable for the difference between (i) the Rental Payments and other amounts payable by Lessee under that Lease plus the then-applicable Purchase Option Price for that Equipment and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing the Equipment and all brokerage, auctioneers' and attorneys' fees) provided that the amount of Lessee's liability under this subparagraph (b) shall not exceed the Rental Payments and other amounts otherwise due under that Lease plus the remaining Rental Payments and other amounts payable by Lessee under that Lease to the end of the then current Original Term or Renewal Term; and
- (c) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under that Lease or as the owner of any or all of the Equipment that is subject to that Lease.

In addition, whenever an Event of Default exists with respect to any Rental Payment required by a particular Schedule or with respect to any other payment, covenant, condition, agreement, statement, representation or warranty set forth in that Schedule or applicable to that Schedule or the Equipment listed therein, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (d) By written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee pursuant to that Schedule and other amounts payable by Lessee under this Agreement to the end of the then current Original Term or Renewal Term to be due;
- (e) With or without terminating that Schedule, Lessor may, upon 5 days written notice to Lessee, enter the premises where the Equipment listed in that Schedule is located and retake possession of that Equipment or require Lessee at Lessee's expense to promptly return any or all of that Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease that Equipment or, for the account of Lessee, sublease that Equipment, continuing to hold Lessee liable for the difference between (i) the Rental Payments payable by Lessee pursuant to that Schedule and other amounts related to that Schedule or the Equipment listed therein that are payable by Lessee hereunder plus the then applicable Purchase Option Price for that Equipment, and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneers' and attorneys' fees) provided that the amount of Lessee's liability under this subparagraph (e) shall not exceed the Rental Payments and other amounts otherwise due under that Schedule plus the remaining Rental Payments and other amounts payable by Lessee under that Schedule to the end of the then current Original Term or Renewal Term; and
- (f) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under that Schedule, this Agreement with respect to that Schedule and the Equipment listed therein.

In addition to the remedies specified above, Lessor may charge interest on all amounts due to it at the rate of 10% per annum or the maximum amount permitted by law, whichever is less. The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities under any other Schedules, this Agreement related to any other Schedule or the Equipment listed therein.

Section 10.03. No Remedy Exclusive. No remedy conferred upon or reserved to Lessor by this Article is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this lease. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right and power may be exercised from time to time and as often as may be deemed expedient by Lessor or its assignee.

Section 10.04. Agreement to Pay Attorneys' Fees and Expenses. If Lessee should default under any of the provisions hereof and Lessor should employ attorneys or incur other expenses for the collection of moneys or for the enforcement of performance or observance of any obligation or agreement on the part of Lessee contained in this Agreement, Lessee agrees, to the extent it is permitted by law to do so, that it will, if assessed by a court of competent jurisdiction, pay to Lessor the reasonable fees of those attorneys and other reasonable expenses so incurred by Lessor.

Section 10.05. Application of Moneys. Any net proceeds from the exercise of any remedy hereunder (after deducting all expenses of Lessor in exercising such remedies including without limitation all expenses of taking possession, storing, reconditioning and selling or leasing Equipment and all brokerage, auctioneer's or attorney's fees) shall be applied as follows:

- (a) If such remedy is exercised solely with respect to a single Schedule, Equipment listed in that Schedule or rights under the Agreement related to that Schedule, then to amounts due pursuant to that Schedule and other amounts related to that Schedule or that Equipment.
- (b) If such remedy is exercised with respect to more than one Schedule, Equipment listed in more than one Schedule or rights under the Agreement related to more than one Schedule, then to amounts due pursuant to those Schedules pro rata.

ARTICLE XI. MISCELLANEOUS

Section 11.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business.

Section 11.02. Binding Effect: Entire Agreement; Amendments and Modifications. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the Lessor and the Lessee; nor shall any such amendment that affects the rights of Lessor's assignee be effective without such assignee's consent. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.03. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.04. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.05. Amendments, Changes and Modifications. This Agreement may be amended, added to, changed or modified by written agreement duly executed by Lessor and Lessee.

Section 11.06. Execution in Counterparts; Chattel Paper. This Agreement, including in writing each Schedule, may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument; except (1) to the extent that various Schedules and this Agreement as it relates thereto constitutes separate Leases as provided in this Agreement and (2) that Lessor's interest in, to and under any Schedule and the Agreement as it relates to that Schedule, and the Equipment listed in that Schedule may be sold or pledged only by delivering possession of the original counterpart of that Schedule marked "Counterpart No. 1," which Counterpart No. 1 shall constitute chattel paper for purposes of the Uniform Commercial Code.

Section 11.07. Usury. The parties hereto agree that the charges in this Agreement and any Lease shall not be a violation of usury or other law. Any such excess charge shall be applied in such order as to conform this Agreement and such Lease to such applicable law.

Section 11.08. Jury Trial Waiver. To the extent permitted by law, lessee agrees to waive its right to a trial by jury.

Section 11.09. Facsimile Documentation. Lessee agrees that a facsimile copy of this Agreement or any Lease with facsimile signatures may be treated as an original and will be admissible as evidence of this Agreement or such Lease.

Section 11.10. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives listed below.

Lease No. SOUNC2025-07

LESSEE:
Town of Southern Shores

LESSOR:
Community First National Bank

Cliff Ogburn, Town Manager

Blake Kaus, VP

EXHIBIT A

SCHEDULE OF EQUIPMENT NO. 01, Dated 7/18/2025

Counterpart No. 1.

LESSOR'S INTEREST IN, TO AND UNDER THIS SCHEDULE AND THE AGREEMENT AS IT RELATES TO THIS SCHEDULE MAY BE SOLD OR PLEDGED ONLY BY DELIVERING POSSESSION OF COUNTERPART NO. 1 OF THIS SCHEDULE, WHICH COUNTERPART NO. 1 SHALL CONSTITUTE CHATTEL PAPER FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE.

Re: Master Equipment Lease Purchase Agreement, dated as of 7/18/2025, between Community First National Bank, as Lessor, and Town of Southern Shores, as Lessee.

1. **Defined Terms.** All terms used herein have the meanings ascribed to them in the above referenced Master Equipment Lease Purchase Agreement (the "Master Equipment Lease").
2. **Equipment.** The Equipment included under this Schedule of Equipment is comprised of the items described in the Equipment Description attached hereto as **Attachment 1**, together with all replacements, substitutions, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto.
3. **Payment Schedule.** The Rental Payments and Purchase Option Prices under this Schedule of Equipment are set forth in the Payment Schedule attached as **Attachment 2** hereto.
4. **Representations, Warranties and Covenants.** Lessee hereby represents, warrants, and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the date of commencement of Rental Payments on this Schedule.
5. **The Master Equipment Lease.** This Schedule is hereby made as part of the Master Equipment Lease and Lessor and Lessee hereby ratify and confirm the Master Equipment Lease. The terms and provisions of the Master Equipment Lease (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated by reference and made a part hereof.

Lease Number: SOUNC2025-07

LESSEE:
Town of Southern Shores

LESSOR:
Community First National Bank

Cliff Ogburn, Town Manager

Blake Kaus, VP

ATTACHMENT 1 EQUIPMENT DESCRIPTION

RE: Schedule of Equipment No. 01, dated 7/18/2025, to Master Equipment Lease Purchase Agreement, dated as of 7/18/2025, between Community First National Bank, as Lessor, and Town of Southern Shores, as Lessee.

Lease Number: SOUNC2025-07

(1) 2022 E-One Custom Aerial Ladder Truck, VIN: 4ENLAAA87N1004388

With a total acquisition cost of \$665,840.71; together with all additions, accessions and replacements thereto. Lessee hereby certifies the description of the personal property set forth above constitutes an accurate description of the "Equipment", as defined in the attached Master Equipment Lease Purchase Agreement and the Equipment is located on the premise of the Lessee unless otherwise noted by the Lessee.

Physical location where equipment will be stored after delivery: _____

LESSEE:
Town of Southern Shores

Cliff Ogburn, Town Manager

ATTACHMENT 2 PAYMENT SCHEDULE

RE: Schedule of Equipment No. 01, dated 7/18/2025, to Master Equipment Lease Purchase Agreement, dated as of 7/18/2025, between Community First National Bank, as Lessor, and Town of Southern Shores, as Lessee.

Lease Number: SOUNC2025-07

Amount Financed: \$665,840.71

AMORTIZATION SCHEDULE

Payment Number	Payment Date	Payment Amount	Interest Portion	Principal Portion	Purchase Option Price
1	8/15/2025	\$125,269.84	\$2,562.45	\$122,707.39	Not Available
2	8/15/2026	\$125,269.84	\$26,874.24	\$98,395.60	\$451,408.79
3	8/15/2027	\$125,269.84	\$22,005.63	\$103,264.21	\$346,595.61
4	8/15/2028	\$125,269.84	\$16,896.11	\$108,373.73	\$236,596.28
5	8/15/2029	\$125,269.84	\$11,533.78	\$113,736.06	\$121,154.18
6	8/15/2030	\$125,269.84	\$5,906.12	\$119,363.72	\$0.00
Grand Totals		\$751,619.04	\$85,778.33	\$665,840.71	

LESSEE:

Town of Southern Shores

Cliff Ogburn, Town Manager



Town of Southern Shores

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

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

info@southernshores-nc.gov

www.southernshores-nc.gov

**RESOLUTION AUTHORIZING THE
APPROVAL AND EXECUTION OF A FINANCING AGREEMENT
AUTHORIZED BY
NORTH CAROLINA GENERAL STATUTE 160A-20**

WHEREAS, the Town of Southern Shores, North Carolina is assuming ownership of a T-12 E-One Custom Aerial Ladder Truck that was owned by the Southern Shores Volunteer Fire Department, Inc., which Ladder Truck will be operated by the Southern Shores Fire Department in order to better serve the citizens of Southern Shores; and

WHEREAS, in connection with its assuming ownership of the said Ladder Truck, the Town of Southern Shores desires to enter into a installment financing contract in order to refinance the existing installment financing obligations due on the said Ladder Truck; and

WHEREAS, The Town of Southern Shores desires to refinance the Ladder Truck for the Southern Shores Fire Department by the use of an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; and

WHEREAS, the Town of Southern Shores intends to seek installment funding in the amount of \$665,840.71 from Community First National Bank for the lease of the Ladder Truck with the option to purchase; and

WHEREAS, said lease with the option to purchase will include installment payments over a 6-year term, with 4.948% interest accrued over the entire loan term.

NOW, THEREFORE, BE IT RESOLVED that the Town of Southern Shores, North Carolina, in a regular meeting on the 5th day of August, 2025, agree to request funding through Community First National Bank for the lease of the Ladder Truck with the option to purchase.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Town Manager is hereby authorized to act on behalf of the Town of Southern Shores in filing an application with Community First National Bank for the proposed lease with the option to purchase financing contract, executing said contract should the said lease with the option to purchase financing contract be approved, and taking other actions not inconsistent with this resolution.

Adopted this the 5th day of August, 2025.

A. Elizabeth Morey, Mayor
Southern Shores

Attest: _____
Sheila Kane, Town Clerk





AGENDA ITEM SUMMARY

Item #6

MEETING DATE: August 5, 2025

ITEM TITLE: Consideration of application for Advance Assistance as part of the Hazard Mitigation Grant Program

ITEM SUMMARY:

The Town is working with the Town of Duck on a stormwater project at the northern end of town. We are applying for a Hazard Mitigation Grant (HMGP) through the State. The HMGP is a FEMA-funded program designed to reduce or eliminate future damage and loss following a disaster. The program is federally funded but managed by the North Carolina Department of Public Safety's Division of Emergency Management.

In advance of the grant deadline, we are requesting approval for an application that will provide funding for the planning and designing for the construction planned under the HMGP. An Advance Assistance application under FEMA's HMGP provides funding to help communities develop a specific, shovel-ready mitigation project. Eligible uses include preliminary engineering, environmental review, cost estimating, and benefit-cost analysis. Advance Assistance does not fund construction itself, but it strengthens and expedites future HMGP construction applications.

The goal of this project is to create a stormwater collection, treatment, storage and disposal facilities in the vicinity of Sea Oats Trail in the Town of Southern Shores that can be shared by the Town of Southern Shores and the Town of Duck to address stormwater issues within the general vicinity of the northern limits of Southern Shores and the southern limits of Duck. This will help provide safe travel north and south through the impacted area now and in the future.

STAFF RECOMMENDATION AND REQUESTED ACTION:

A motion to authorize the Town Manager to execute documents associated with the Hazard Mitigation Grant Program's Advance Assistance application.