Town of Southern Shores
Regular Council Meeting
May 2, 2017

The Town of Southern Shores Council met in the Pitts Center located at 5375 N. Virginia Dare Trail at 5:30 p.m. on Tuesday, May 2, 2017.

COUNCIL MEMBERS PRESENT: Mayor Bennett and Council Members Leo Holland, Chris Nason

COUNCIL MEMBERS ABSENT: Mayor pro tem Fred Newberry and Council Member Gary McDonald

CALL TO ORDER / PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE
Mayor Bennett called the meeting to order at 5:30 p.m., led the Pledge of Allegiance, and held a moment of silence.

AMENDMENTS / APPROVAL OF AGENDA
MOTION: Council Member Nason moved to approve the agenda. The motion was seconded by Council Member Holland. The motion passed unanimously (3-0).

CONSENT AGENDA
The Consent Agenda consisted of the following items:

i. Approval of Minutes- March 21, 2017
ii. Budget Amendment #18 Intra-Departmental Budget Transfer for HX Matthew Recovery

MOTION: Council Member Holland moved to approve the Consent Agenda. The motion was seconded by Council Member Nason. The motion passed unanimously (3-0).

STAFF REPORTS
The following Department Heads presented department reports for the month of April:

- Town Planner Wes Haskett presented the Planning Department's monthly report containing permitting and inspections for the month of April.
- Police Chief David Kole presented the Police Department's monthly report for April
- Fire Chief Ed Limbacher presented the Fire Department's monthly report for April
- The Town Manager presented his report and addressed several matters:
    - FY2017-2018 Manager's Proposed Budget has officially been filed. A copy is available in the clerk office or available online.
    - Request the Mayor set the statutory public hearing for the FY2017-2018 budget for June 6th.
    - The Beach Nourishment permit is almost complete.
    - Man-power planning for monitoring traffic at NC12 intersections during the summer season is underway

- The LED lighting at the NC 12 crosswalks is underway.
- NCDOT are installing thermoplastic striping for crosswalks
- The storm water remediation project on East Dogwood and NC12 is well underway. Several abandoned utilities have been discovered which may cause a delay.
- Osprey Lane and Wild Swan street improvement projects are underway.
- The design (only) for a 5ft walkway on Dogwood Trail is being created.
- Both roving guards and fixed lifeguard stands begin on May 15th.
- The NC12 speed limit reduction will go into effect around May 15th and will be lifted around September 15th.

Mayor Bennett called for consideration of a public hearing on June 6th to hear citizen comment on the proposed budget for FY2017-2018.
MOTION: Council Member Nason moved to set a Public Hearing for June 6th on the FY 2017-2018 Proposed Budget. The motion was seconded by Council Member Holland. The motion passed unanimously (3-0).

Town Attorney Gallop gave a report update on the Nies vs Emerald Isle stating thet process continues.

Town Attorney Gallop recommended options for Planning Board consideration to clarify "accessory structures" (Town Code Sec. § 36-202 (b)(2)) pertaining to enclosed living spaces, and "Dwelling Unit" (Town Code Sec. § 36-57). He stated a two-step process will be needed to address the issue of clarification. The first step is to address the immediate problem, and then the next step is what does Council want to do in the future. He will transmit his recommendations to the Planning Board through the Town Planner for its consideration of a recommendation to Council.

Council Member Nason stated he was encouraged that existing structures are being addressed.

GENERAL PUBLIC COMMENT
Mayor Bennett called for public comment and the following citizens offered comment:

- Vince Ferretti-296 Wax Myrtle-approached the Town Planner about accessory building. Shouldn't permit if accessory building is to be rented to non-family member. Should grandfather existing suites as part of the zoning code.
- Carlos Gomez-46 Juniper Trail. Street improvement is changing the look of what has been in place for many years Since there is a sidewalk, storm water has no place to go. Cutting 8 trees and adding curb and gutter on side-other systems could fix the issue. Do not modernize view of our Town.
- Mark Martin-191 Wax Myrtle-confusion has happened over twenty years about the accessory structures. Started with pool house connected by heated space. You cannot get Town approval now. Agrees the clarification needs to be fixed in the ordinance.
- Debbie Newberry-267 N Dogwood-Sorry her husband could not make the meeting. The issue of Low Impact Development standards has come back up again. Town is putting in curbs and gutters and cutting trees again. Not low impact and Council and Town Manager need to look at it again and reconsider for large picture. Curbs and gutters cost more. Look at swales and natural typography.
- Jim Connors, 83 Duck Woods Drive - attended service where a resident stated to him that they do not attend Council meeting anymore because they have gotten too long. Council needs to show up prepared and ready to do business. Get agenda squared

away and stop adding things at the meeting. Groups need to get together and designate an individual to speak for the group, not all individual statements. Length of meeting discouraging.

- Tommy Karole - 77 E Dogwood-Low Impact Development. Town Manager is doing what he is told from Council. Land Use Plan calls for low impact. Are the Mayor and Manager legally bound to follow this plan?
- Brian Forbes-10 Pelican Watch Way-thanked Council, Mayor, Manager and Staff for making beach nourishment a reality.
- John Ryan - 41 Porpoise Run-At April 18th budget workshop-need for a spending plan. One should be introduced in June. Possible property tax increase. Important to have that document for election time.

Hearing no other citizen wishing to speak, the Mayor closed public comment.

[Clerk's Note: A copy of the public comment signup sheet is hereby attached].

OLD BUSINESS

Public Hearing-Preliminary Assessment Resolution for Beach Nourishment Project

Mayor Bennett opened the public hearing and called on public comment. Hearing no one wishing to speak he closed the public hearing.

Next Agenda item:

Consideration of Resolution Directing That *A Beach Nourishment Project Be Undertaken and Specially Assessed.*

MOTION: Council Member Nason moved to adopt the *Preliminary Assessment Resolution for Beach Nourishment Project.* The motion was seconded by Council Member Holland. The motion passed unanimously (3-0).

Next Agenda item:

Public Hearing: Objections to Completion of Preliminary Assessment Roll for Beach Nourishment Project.

Mayor Bennett opened the public hearing and called on public comment. Hearing no one wishing to speak he closed the public hearing.

Next Agenda item:

Consideration of Resolution *Confirming Assessment Roll and Levying Assessments for A Beach Nourishment Project.*

MOTION: Mayor Bennett moved to adopt the *Resolution Confirming Assessment Roll and Levying Assessments for A Beach Nourishment Project.* The motion was seconded by Council Member Nason. The motion passed unanimously (3-0).

Next Agenda item:

Consideration of Budget Amendment #17, *for Funding Special Assessment Portion of Beach Nourishment Project Prior to Assessment Collection.*

MOTION: Council Member Nason moved to approve Budget Amendment #17, *for Funding Special Assessment Portion of Beach Nourishment Project Prior to Assessment Collection.* The motion was seconded by Council member Holland. The motion passed unanimously (3-0).

Council Member Holland asked the Town Manager about the billing procedure for the assessment. Town Manager Rascoe stated that Dare County will send out the bills and all collected monies will go back into the unassigned fund balance.

Next Agenda item:
Consideration of *Interlocal Agreement Between Dare County and Town of Southern Shores for Beach Nourishment Project.*
MOTION: Council Member Holland moved to approve *the Interlocal Agreement between Dare County and Town of Southern Shores for Beach Nourishment Project.* The motion was seconded by Council member Nason. The motion passed unanimously (3-0).

GENERAL PUBLIC COMMENT

- Tommy Karole 77 E Dogwood-Would like Council Member Nason and Holland's opinion on Low Impact Design.
- Debbie Newberry 267 N. Dogwood Trail-not using Low Impact Design. Council has been told by her before, and she said it is really sad.

Mayor's Comments:
Mayor Bennett reported on the upcoming ARPO meeting in Edenton which he attended with the Town Planner.

He stated NCDOT indicated that the start of the Mid Currituck Bridge will be delayed at least till 2018.

Mayor Bennett also reported that passenger ferry services to Ocracoke should begin in the spring of 2018. There are plans for a tram service on the island.

He also stated the Special Olympics, held recently in Kill Devil Hills was well attended and well supported by residents of Southern Shores

Council Member's Comment & Responses
Council Member Holland stated every street needs to be looked at individually when considering street improvement design. HB531 which Council address did not make it out of committee. The Town of Southern Shores has benefitted from Tourism Bureau grants in the past.

Council Member Nason stated Carlos Gomez brings a level head to the issue of street design, Low Impact may not always be the solution. Council needs to find a solution which is best for each situation. Would like the Town Engineer to come speak about Low Impact Development. He stated it appears people are fighting over its definition.

ADJOURN
MOTION: Council Member Holland moved to adjourn. The motion was seconded by Mayor Bennett. The motion passed unanimously (3-0). The time was 6:48 pm.

ATTEST:

Thomas G. Bennett, Mayor

TOWN OF SOUTHERN SHORES SEAL NC

Respectfully submitted,

Sheila Kane, Town Clerk

Town of Southern Shores
Budget Amendment Number # 18

Increases			Decreases		
Account Number	Description	Amount	Account Number	Description	Amount
57-50153	Hurricane Matthew Recovery	$21,150.00	57-50798	Dogwood Survey	$21,150.00
		21,150			21,150

Explanation: Intra-Departmental transfer-Final Billing. Cost for Crowder- Gulf disposal at ARSWA for Hurricane Matthew Recovery

Recommended By:

J. Peter Rascoe, III

TOWN OF SOUTHERN SHORES SEAL NC

Approved By:

Tom Bennett, Mayor

5-2-17

Date

PUBLIC COMMENT #1

GENERAL PUBLIC COMMENT SIGN-UP SHEET

May 2, 2017

We encourage your public comments. All speakers must recognize the utmost importance of maintaining the decorum of Town meetings and of the need for all to have an opportunity to speak in a timely and uninterrupted manner. Please limit your comments to 3 minutes and speak courteously and respectfully to the Council as a whole. The 3 minute time allotted is your time to speak. You may choose to use all of it or less, but it is not transferrable to anyone else. Public comment is your opportunity to provide input on Town matters. It is not meant to be a dialogue exchange between you, members of the Council, or others in the audience.

NAME	MAILING ADDRESS OF RESIDENT	TOPIC
VINCENT FERRETTI	296 WAX MYRTLE TRL	accessory structures + pedestrian crosswalk
Carlos Gomez	46 Juniper Tr	Juniper Tr!
Mark Martin	191 Wax Myrtle Trail	accessory structures
DEBBIE NEWBERRY	267 N DOGWOOD TR	MISC
JIM Conners	83 DUCKWOODS DR	—
Tommy KAROLE	77 E DOGWOOD	
Brian Forbes	10 Pelican Watch Way	beach nourishment
Geri Gillwein	31 Tench ave	—
Jeffrey Ryan	41 PORPOISE	BUDGET -

PUBLIC COMMENT #2

GENERAL PUBLIC COMMENT SIGN-UP SHEET

May 2, 2017

We encourage your public comments. All speakers must recognize the utmost importance of maintaining the decorum of Town meetings and of the need for all to have an opportunity to speak in a timely and uninterrupted manner. Please limit your comments to 3 minutes and speak courteously and respectfully to the Council as a whole. The 3 minute time allotted is your time to speak. You may choose to use all of it or less, but it is not transferrable to anyone else. Public comment is your opportunity to provide input on Town matters. It is not meant to be a dialogue exchange between you, members of the Council, or others in the audience.

NAME	MAILING ADDRESS OF RESIDENT	TOPIC
Tommy Karole	77 E. Dogwood	

Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949
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RESOLUTION CONFIRMING ASSESSMENT ROLL AND LEVYING ASSESSMENTS FOR A BEACH NOURISHMENT PROJECT

WHEREAS, the Town Council for the Town of Southern Shores, North Carolina has on this day held a public hearing, after due notice as required by law, on the Preliminary Assessment Roll for a proposed beach nourishment project along approximately 1,500 feet of public trust ocean beach at the southern-most end of the Town of Southern Shores town limits, which beach nourishment project will involve acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works (the "Project"); and

WHEREAS, the Project more generally affects those parcels located North of the southern-most Town Limit of the Town of Southern Shores, East of the eastern right-of-way boundary of North Carolina State Highway 12, West of the Atlantic Ocean, and South of the southern boundary of a parcel of land owned by the Southern Shores Civic Association, Inc. with a Dare County Parcel Identification Number of 987713035293; and

WHEREAS, the Town Council for the Town of Southern Shores, North Carolina has heard all those present who requested to be heard, and has found the said Assessment Roll to be proper and correct.

NOW, THEREFORE, BE IT RESOLVED by the Town Council for the Town of Southern Shores, North Carolina that:

1. The Assessment Roll for the Project is hereby declared to be correct, and is hereby confirmed in accordance with G.S. 160A-228.

2. The Town Council for the Town of Southern Shores, North Carolina pursuant to authority conferred by Chapter 160A, Article 10 and Article 10A of the General Statutes of North Carolina does hereby levy assessments as contained in the said Assessment Roll, a copy of which is attached as **Exhibit A**.

3. The Town Clerk for the Town of Southern Shores, North Carolina is hereby directed to deliver to the said Assessment Roll to the Tax Collector for the Town of Southern Shores, North Carolina.

4. The Tax Collector for the Town of Southern Shores, North Carolina is hereby charged with the collection of the said assessments in accordance with the procedure established by law.

5. The Town Clerk for the Town of Southern Shores, North Carolina is hereby further directed to publish once on or after the 23rd day of May, 2017 (must be published after the expiration of 20 days from date of adoption), a notice of confirmation of the Assessment Roll, which notice shall set forth the terms of payment of the assessments, with installment payments to be due and payable on the same date as of ad valorem property taxes.

Adopted this 2 day of May, 2017.

Tom Bennett, Mayor

Attest:

Sheila Kane, Town Clerk

TOWN OF SOUTHERN SHORES SEAL NC

EXHIBIT

A

No.	Street Name	Land Area (sq ft) Per Dare County	AREA %	PARCEL	PIN	AREA %	Total Assessment	Annual Assessment (5 yrs)
26	OCEAN BLVD	19000	4.2986%	22813000	987713036128	4.2986%	$6,447.96	$1,289.59
24	OCEAN BLVD	19000	4.2986%	22812000	987713036151	4.2986%	$6,447.96	$1,289.59
22	OCEAN BLVD	18500	4.1855%	22811001	987713036095	4.1855%	$6,278.28	$1,255.66
20	OCEAN BLVD	25000	5.6561%	22811000	987713027938	5.6561%	$8,484.16	$1,696.83
18	OCEAN BLVD	19000	4.2986%	28714000	987713027879	4.2986%	$6,447.96	$1,289.59
8	SEA BASS CIR	15000	3.3937%	22810000	987713028803	3.3937%	$5,090.50	$1,018.10
6	SEA BASS CIR	10000	2.2624%	22809000	987713028880	2.2624%	$3,393.67	$678.73
4	SEA BASS CIR	8000	1.8100%	22808000	987713029723	1.8100%	$2,714.93	$542.99
2	SEA BASS CIR	20500	4.6380%	22807000	987713029637	4.6380%	$6,957.01	$1,391.40
1	SEA BASS CIR	17500	3.9593%	27135000	987713027657	3.9593%	$5,938.91	$1,187.78
12	OCEAN BLVD	20500	4.6380%	22802498	987713029576	4.6380%	$6,957.01	$1,391.40
30	PELICAN WATCH WAY	6500	1.4706%	22802013	98771712042802	1.4706%	$2,205.88	$441.18
32	PELICAN WATCH WAY	6500	1.4706%	22802001	98771712042801	1.4706%	$2,205.88	$441.18
26	PELICAN WATCH WAY	6500	1.4706%	22802025	98771712046102	1.4706%	$2,205.88	$441.18
28	PELICAN WATCH WAY	6500	1.4706%	22802002	98771712046101	1.4706%	$2,205.88	$441.18
22	PELICAN WATCH WAY	6250	1.4140%	22802014	98771712130402	1.4140%	$2,121.04	$424.21
24	PELICAN WATCH WAY	6250	1.4140%	22802003	98771712130401	1.4140%	$2,121.04	$424.21
18	PELICAN WATCH WAY	6250	1.4140%	22802000	98771712029601	1.4140%	$2,121.04	$424.21
20	PELICAN WATCH WAY	6250	1.4140%	22802004	98771712029602	1.4140%	$2,121.04	$424.21
14	PELICAN WATCH WAY	6250	1.4140%	22802017	98771712129102	1.4140%	$2,121.04	$424.21
16	PELICAN WATCH WAY	6250	1.4140%	22802005	98771712129101	1.4140%	$2,121.04	$424.21
10	PELICAN WATCH WAY	6500	1.4706%	22802018	98771712213402	1.4706%	$2,205.88	$441.18
12	PELICAN WATCH WAY	6500	1.4706%	22802006	98771712213401	1.4706%	$2,205.88	$441.18
6	PELICAN WATCH WAY	6000	1.3575%	22802019	98771712207702	1.3575%	$2,036.20	$407.24
8	PELICAN WATCH WAY	6000	1.3575%	22802007	98771712207701	1.3575%	$2,036.20	$407.24
2	PELICAN WATCH WAY	6500	1.4706%	22802020	98771712301002	1.4706%	$2,205.88	$441.18
4	PELICAN WATCH WAY	6500	1.4706%	22802008	98771712301001	1.4706%	$2,205.88	$441.18
1	PELICAN WATCH WAY	10000	2.2624%	22802021	98771711093202	2.2624%	$3,393.67	$678.73
3	PELICAN WATCH WAY	10000	2.2624%	22802009	98771711093201	2.2624%	$3,393.67	$678.73
5	PELICAN WATCH WAY	10000	2.2624%	22802015	98771702904602	2.2624%	$3,393.67	$678.73
7	PELICAN WATCH WAY	10000	2.2624%	22802010	98771702904601	2.2624%	$3,393.67	$678.73
9	PELICAN WATCH WAY	10000	2.2624%	22802023	98771702912902	2.2624%	$3,393.67	$678.73
11	PELICAN WATCH WAY	10000	2.2624%	22802011	98771702912901	2.2624%	$3,393.67	$678.73
13	PELICAN WATCH WAY	10000	2.2624%	22802024	98771702836302	2.2624%	$3,393.67	$678.73
15	PELICAN WATCH WAY	10000	2.2624%	22802012	98771702836301	2.2624%	$3,393.67	$678.73
8	OCEAN BLVD	20500	4.6380%	022819009	987717018978	4.6380%	$6,957.01	$1,391.40
6	OCEAN BLVD	27500	6.2217%	022819010	987717019836	6.2217%	$9,332.58	$1,866.52
4	OCEAN BLVD	20500	4.6380%	022819011	987717018812	4.6380%	$6,957.01	$1,391.40
			100.0000%			100.0000%		
		442000					150,000.00	30,000.00
					ASSESSMENT			X5
					150,000.00			150,000.00

Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949
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RESOLUTION DIRECTING THAT A BEACH NOURISHMENT PROJECT BE UNDERTAKEN AND SPECIALLY ASSESSED

WHEREAS, the property owners of some of the benefitted property shown on the attached Exhibit A (the "Assessed Parcels") filed a petition (the "Petition") with the Town of Southern Shores (the "Town") requesting a special assessment for the costs of acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works via a proposed beach nourishment project (the "Project");

WHEREAS, the Project as proposed will be an engineered beach nourishment project along approximately 1,500 feet of public trust ocean beach at the southern-most end of the Town of Southern Shores town limits, including engineered placement of approximately 1,000 feet of sand to be tapered north of the 1,500 feet as a necessary function of the Project;

WHEREAS, the total cost of the Project is estimated to be $1,000,000, and the Town's portion of said cost is estimated to be $500,000. The Petition has requested an assessment of 30% of the Town's estimated project cost in the amount of $150,000. The remaining 70% of the Town's estimated project cost, or $350,000, shall be paid from the general revenues of the Town;

WHEREAS, the signatories to the Petition and the Town Council have concluded that levying assessments based upon the area of the Assessed Parcels as shown on the Dare County Tax Department records is the method that will most accurately assess each lot or parcel of land subject to the assessments according to the benefits conferred upon it by the Project;

WHEREAS, the signatories to the Petition and the Town Council have concluded that the Assessed Parcels will be benefitted by the Project;

WHEREAS, the Town Clerk has certified to the Town Council that the Petition is sufficient in all respects and in conformity with all the requirements of Chapter 160A, Article 10 and 10A of the General Statutes of North Carolina; and

WHEREAS, a preliminary assessment resolution was adopted by the Town Council and a public hearing thereon duly held.

NOW, THEREFORE BE IT RESOLVED, pursuant to Chapter 160A, Article 10 and 10A of the General Statutes of North Carolina, that the Town Council of the Town of Southern Shores, North Carolina adopts this resolution to undertake the Project and impose special assessments as follows:

1. The Petition is found to be sufficient in all respects.

2. The Town shall undertake the Project.

3. The Project will be an engineered beach nourishment project along approximately1,500 feet of public trust ocean beach at the southern-most end of the Town of Southern Shores town limits, including engineered placement of approximately 1,000 feet of sand to be tapered north of the 1,500 feet as a necessary function of the Project.

4. The assessments will be levied against the Assessed Parcels based upon the area of the parcels as shown on the Dare County Tax Department records as of the date of this resolution. The approximate boundaries of the assessment area are shown on Exhibit A.

5. The Assessed Parcels will be assessed at 30% of the Town's estimated cost for the Project in the total aggregate amount of $150,000 for the Assessed Parcels. The Town will pay the remaining 70% of the Town's estimated cost for the Project, or $350,000, from the general revenues of the Town.

6. No assessments shall be held in abeyance. Assessments shall be due on the same schedule as ad valorem taxes for the years that the assessments are billed.

7. The terms of the assessment will be as follows:
   a. This assessment will be assessed to the property owners in five (5) equal annual installments.
   b. Installment payments shall be due and payable on the same dates as of ad valorem property taxes.
   c. Interest and penalties shall accrue on the assessment amounts in accordance with the rates and procedures for ad valorem taxes.
   d. The assessed property owner has the option to pay all of their total assessment in one (1) payment without incurring interest. This payment must be paid within thirty (30) days after the publication of the notice that the final Assessment Roll has been confirmed.

Adopted this 2 day of May, 2017.

Thomas G. Bennett
Tom Bennett, Mayor

Attest:

Sheila Kane, Town Clerk

TOWN OF SOUTHERN SHORES SEAL NC

EXHIBIT

A

The "*Southern Shores Beach Erosion Control Service District-South*", is identified all those residential-zoned real properties, being parcels of land located in the Town of Southern Shores, Dare County, North Carolina and situated north of the southern-most Town Limit of the Town of Southern Shores also being the northern-most Town limit of the Town of Kitty Hawk, East of the eastern right-of-way boundary of North Carolina State Highway 12, West of the Atlantic Ocean, and South of the southern boundary of a parcel of land owned by the Southern Shores Civic Association, Inc., Dare County Parcel Identification Number (PIN) 987713035293 and commonly known as "Ocean View Loop Beach Access".

Map (yellow highlighted area):

INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT** dated as of April ___, 2017 (the *"Interlocal Agreement"*) among the **COUNTY OF DARE, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the *"County"*), the **TOWN OF SOUTHERN SHORES, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina (the *"SS"*),;

WITNESSETH

WHEREAS, the Town has determined to undertake a beach nourishment project within its Town as they are authorized to do under North Carolina law;

WHEREAS, the County has determined to assist the Town in financing the beach nourishment projects from the County's beach nourishment fund;

WHEREAS, the Town and the County have determined that they can achieve significant cost savings by cooperating to construct the beach nourishment projects by entering into a single construction contract for such projects;

WHEREAS, under Article 20 of Chapter 160A of the North Carolina General Statutes, as amended (the *"Interlocal Act"*), municipalities and counties are authorized to enter into interlocal cooperation undertakings with other local governments for the joint exercise of any power, function, public enterprise, right, privilege, or immunity of local governments in North Carolina;

WHEREAS, the parties to this Interlocal Agreement desire to set forth their agreement herein;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

In addition to the terms defined above, the following terms have the meanings herein as set forth therefor, unless the context otherwise requires:

"Beach Nourishment Fund" means the fund held by the County from occupancy tax proceeds and dedicated to beach nourishment projects in the County.

"Contracts" means, collectively, the Dredge and Construction Contract and the Project Management Contract.

"Construction Fund" means the fund established under Section 4.2.

"County Contribution" means the amount that the County will pay from the Beach Nourishment Fund towards each Project as set forth Section 4.1.

"Dredge and Construction Contract" means the primary contract with the winning bidder for the construction of the Projects.

"Duck Project" means the portion of the Projects within the Town limits of Duck.

"Kill Devil Hills Project" means the portion of the Projects within the Town limits of Kill Devil Hills.

"Kitty Hawk Project" means the portion of the Projects within the Town limits of Kitty Hawk.

"Project Manager" means Coastal Planning & Engineering of North Carolina, P.C.

"Project Management Contract" means contract with the Project Manager to monitor and manage the construction of the Projects on behalf of the Town.

"Projects" means the beach nourishment projects in each of the Town that will be described in detail in the Dredge and Construction Contract.

"Town Representatives" means the duly authorized representative of the Town authorized to execute all documents contemplated by this Interlocal Agreement and to administer this Interlocal Agreement on behalf of the Town.

ARTICLE II

STATEMENT OF PURPOSE

The Town and the County are entering into this Interlocal Agreement under the Interlocal Act to cooperate in the construction of the Projects by having the County enter into the Contracts for the Projects to achieve overall savings on the construction costs. This Interlocal Agreement sets forth the terms under which the County will enter into the Contracts for the Projects and the parties understanding as to the administration of the construction process, the financing of the Projects and the liabilities associated with the construction of the Projects.

ARTICLE III

CONSTRUCTION AND ADMINISTRATION OF PROJECTS

Section 3.1. ***Administration of Projects.*** The County will enter into the Contract for the Projects or modify the existing contract between County and contractor for the construction of the Duck, Kitty Hawk and Kill Devil Hills projects.. SS will be solely responsible for the administration of the SS Project. The Town will designate a Town Representative or Representatives that are authorized by his or her respective Town to execute all documents contemplated by this Interlocal Agreement and to administer this Interlocal Agreement on behalf of the Town. The Project Manager will manage the Projects on a day-to-day basis on behalf of each Town under the Project Management Contract. The Project Manager will provide periodic updates to the Town and the County on the Projects as required by the Project Management Contract.

Section 3.2. ***Project Modifications.*** The Town shall have the right, power and authority to cause modifications to the design, scope, construction and other aspects of its Project (the ***"Project Modifications"***). The Town shall have the right to enact a Project Modification that increases the cost of its Project as long as the Town accepts in writing the sole responsibility for the additional cost of its

Project unless the County and the Town agree otherwise in an amendment to this Interlocal Agreement. Any Project Modifications shall be memorialized in writing and a copy of same shall be submitted by the Town implementing the Project Modification to the County and the other Town at least ten (10) business days before the effective date of the Project Modification. In no event shall a Project Modifications (i) materially impact any of the other Projects without the applicable Town's prior written consent or (ii) increase the County Contribution for such Project without the County's prior written consent. The County agrees to sign any change order to the Contracts submitted in accordance with the terms of this Section 3.2.

Section 3.3. ***Construction Meetings.*** In addition to the construction meetings required in the Dredge and Construction Contract, the County may call joint meetings of the County and the Town Representatives to receive construction updates and to discuss matters pertaining to the Projects and this Interlocal Agreement.

Section 3.4. ***Payment of Invoices.*** All invoices submitted pursuant to the Contracts for the Projects will be reviewed by the Project Manager and submitted to the Town for approval. Once approved by the Town, unless payment is to be made to the Project Manager, the Project Manager will submit the invoice on behalf of the Town to the County for payment. Unless the County has been informed in writing by a Town Representative of an objection to paying a particular invoice, the County will promptly pay all invoices submitted and approved by the Project Manager in accordance with the instructions on the invoice. The County is not responsible for independently reviewing the validity of the invoices for payment under the Contracts. The County will make all reasonable efforts to effect the payment of the invoices in accordance with the Contracts.

With respect to the invoices submitted under the Dredge and Construction Contract, as part of its approval and submission to the County, the Project Manager will identify the Project with which the payment is associated, or if associated with multiple Projects, how the cost should be allocated among Projects. The County will allocate the Project costs under the Dredge and Construction Contract to each of the Projects as set forth in the Project Manager's submission. The Project costs for invoices submitted under the Project Management Contract will be allocated among the Projects on pro-rata basis based on total costs of the Projects.

Section 3.5. ***Insufficiency of Funds.*** The County will account for the amount of Project costs that are allocable to each Project as set forth in Section 3.4. Notwithstanding anything herein, the County will not be responsible for paying Project Costs from the Construction Fund allocable to a particular Project if the County's records show that there are insufficient funds available from the sources for payment of that Project as set forth in Article IV. In such event, the Town for which funds are insufficient will be solely responsible for payment of such excess costs of the Project.

ARTICLE IV

FINANCING OF PROJECTS

Section 4.1. ***Project Funding.*** The total estimated cost of the project, including pre-construction costs, is $1,000,000. County will contribute an amount equal to 50% of the total cost of the project, not to exceed $500,000.00. All other costs will be paid by Town.

The County will pay its share of the Projects as set forth above from the Beach Nourishment Fund held by the County. The Town will have received all required approvals and will have all funding

in place and available for use on or before the date that the County signs the Dredge and Construction Contract.

Section 4.2. ***Construction Fund.*** The County will establish a Construction Fund to be held by a depository to be selected by the County. Town will provide County with its share of the costs to be deposited in the Construction Fund. Once the Town has deposited its funds into the Construction Fund, all costs of the Contracts will be paid from the fund. It is the intent of the parties hereto that the Town will be required to pay their entire contribution towards the Projects as set forth in Section 4.1 and that any savings from the total Project costs will be retained by the County in the Beach Nourishment Fund and any costs in excess of the estimated shall be paid by Town.

Funds will be requisitioned from the Construction Fund as set forth in Article III. If funds in the Construction Fund are insufficient to complete the Project, the will be solely responsible for any deficiency for such Project. If the actual costs of any of the Projects is less than the Total Project Cost as set forth in Section 4.1, then the excess funds will be retained by the County in the Beach Nourishment Fund.

Section 4.3. ***County Contributions to the Town to be used for Debt Service.*** None.

ARTICLE V

DISPUTES AND MEDIATION

Section 5.1. ***Agreement to Work Together to Settle Disputes.*** This Interlocal Agreement shall be liberally construed in order to promote a harmonious relationship between the parties with regard to the completion of the Projects. The County and the Town accept the relationship of trust and confidence established between each of the parties by this Interlocal Agreement. If a problem or dispute arises that this Interlocal Agreement does not directly or indirectly address, the County shall call a meeting with the Town Representatives to discuss and the County and the Town covenant to work with one another in good faith to determine a mutually satisfactory solution.

Section 5.2. ***Mediation.***

a. *Agreement to Mediate Dispute.* The County and the Town will attempt to settle any dispute, claim or controversy arising out of this Interlocal Agreement through consultation and negotiation in good faith and in a spirit of mutual cooperation as set forth in Section 5.1. If those attempts fail, then the claim or dispute will be mediated by a mutually-acceptable mediator before any party resorts to court action. Mediation is a process in which parties attempt to resolve a dispute by submitting it to an impartial, neutral mediator who is authorized to facilitate the resolution of the dispute, but who is not empowered to impose a settlement on the parties.

b. *Demand for Mediation.* A demand for mediation must be submitted in writing to the other parties to this Interlocal Agreement. The demand for mediation shall proceed in advance of legal or equitable court proceedings, which shall be stayed pending mediation for a period of 60 days from the date of the demand for mediation, unless stayed for a longer period by agreement of the parties or by court order.

c. *Selection of Mediator.* The parties shall jointly select a mediator within 45 days after written notice by either party demanding mediation. The mediator shall be a member of the North Carolina State Bar and residing in the First Judicial District of North Carolina. Failing this joint action, the parties shall each separately designate a mediator and, within 15 days after their appointment, the two

designated mediators shall jointly designate a third mediator. The third mediator shall then become the sole mediator for purposes of this paragraph. The failure of either party to appoint a mediator within the time allowed shall be deemed equivalent to appointing the mediator appointed by the other party. Each mediator shall be disinterested in the subject matter of this Interlocal Agreement.

d. *Mediation Procedure.* The mediation procedure shall be that which is contained in the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted pursuant to N.C. Gen. Stat. Sec. 7A-38.1 as same may be amended from time to time.

e. *Miscellaneous provisions.*

(1) The mediation fee, if any, shall be divided equally among the parties involved.

(2) Each party shall pay its own attorneys' fees and other costs.

(3) Before the mediation begins, the parties agree to sign a document limiting the admissibility in arbitration or any civil action of anything said, any admission made, and any documents prepared, in the course of the mediation.

(4) If any party commences a court action based on a dispute or claim to which this paragraph applies without first attempting to resolve the matter through mediation, then, in the discretion of the judge, that party shall not be entitled to recover attorney's fees even if they would otherwise be available to that party in any such court action. However, the filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not in itself constitute a loss of the right to recover attorney's fees under this provision.

(5) The following matters are excluded from the requirement of mediation hereunder: (a) good faith efforts to resolve the dispute under these procedures have been unsuccessful, or (b) interim relief from a court is necessary to prevent serious and irreparable injury to one party or to others.

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ARTICLE VI

LIABILITIES AND INDEMNIFICATION

The parties acknowledge that the SS project will be part of the existing Duck, Kitty Hawk and Kill Devil Hills project. Any liabilities arising from the Duck Project will be the sole responsibility of Duck. Any liabilities arising from the KDH Project will be the sole responsibility of KDH. Any liabilities arising from the Kitty Hawk Project will be the sole responsibility of Kitty Hawk. Any liabilities arising from the SS Project will be the sole responsibility of SS. Any liabilities arising from the Construction Contract or the Projects as a whole will be the responsibility of each of the Town in proportion to the cost of its particular portion of the Projects to the overall costs of the Projects.

The Town, in the same manner as set forth in the paragraph above with respect to its liabilities under this Interlocal Agreement, will indemnify, protect and save the County and any member of the governing body, officer, agent or employee thereof, acting in such capacity, harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting, directly or indirectly, from the Project or the Contracts, or from injuries to person or property occurring from or related to the Project or the Contracts. It is intended that except as to the provision of funds as set for the in Article IV and the indemnities provided in the following paragraph, County shall have no other monetary or financial liabilities, risks or obligations of any kind arising from the Project or the Contracts. The indemnification arising under this Article shall survive the termination of this Interlocal Agreement and continue in full force and effect notwithstanding the payment in full of all obligations under this Interlocal Agreement.

The Town recognizes that the County is entering into this Interlocal Agreement for the purpose of assisting the Town in the execution and administration of the Contracts in order to achieve savings in the costs of the Project. The County will indemnify, protect and save the Town and any member of the governing body, officer, agent or employee thereof, acting in such capacity, harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting, directly or indirectly the failure of the County to provide the funding and enter into the Contracts in accordance with the terms of this Interlocal Agreement and to pay the invoices under the Contracts in accordance with the terms of Section 3.4. The indemnification arising under this Article shall survive the termination of this Interlocal Agreement and continue in full force and effect notwithstanding the payment in full of all obligations under this Interlocal Agreement.

ARTICLE VII
PERFORMANCE OF GOVERNMENT FUNCTIONS

Nothing contained in this Interlocal Agreement shall be deemed or construed so as to in any way estop, limit, or impair the Town or the County from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions pursuant to applicable law.

ARTICLE VIII
DEFAULTS AND REMEDIES

The County and the Town, or any one of them, will be in default under this Interlocal Agreement if it fails to comply with the terms of this Interlocal Agreement.

If an event of default occurs as set forth in the preceding paragraph, and after following the procedures and requirements of Article V herein, each party hereto will have all remedies available at law or in equity to enforce any of the terms and provisions hereof, including, but not limited to, or actions at law for damages and equitable actions seeking rescission of this Interlocal Agreement and/or injunctive relief (mandatory or prohibitory) to prevent the breach or threatened breach of any term or provision thereof or to enforce the performance of all terms and conditions of this Interlocal Agreement. All remedies are cumulative; the exercise of any one or more of them will not in any way alter or diminish the rights of the exercising party to any other remedy provided herein or at law or in equity. Action under this Interlocal Agreement will not be taken, however, until the non-defaulting party or parties gives the defaulting party or parties written notice of the event of default and a reasonable opportunity to cure the event of default.

ARTICLE XIII
NOTICES

Except as otherwise provided in this Interlocal Agreement, all notices, certificates, requests, requisitions, or other communications given pursuant to this Interlocal Agreement must be in writing and will be sufficiently given and will be deemed given when delivered by hand or mailed by certified mail, postage prepaid, addressed as follows:

County: Attention County Manager
PO Box 1000
Manteo, NC 27954

Duck: Attention Town Manager
PO Box 8369
Duck, NC 27949

KDH: Attention Town Manager
PO Box 1719
Kill Devil Hills, NC 27948

Kitty Hawk: Attention Town Manager
PO Box 549
Kitty Hawk, NC 27949

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

ARTICLE IX

MISCELLANEOUS

Section 9.1. ***Amendment.*** This Interlocal Agreement may be amended through a supplement approved in writing by the County and Town.

Section 9.2. ***Severability.*** If any section of this Interlocal Agreement is deemed to be illegal or otherwise unenforceable, it is the intent of the parties hereto that all other provisions of this Interlocal Agreement shall remain in full force and effect.

Section 9.3. ***Governing Law.*** This Interlocal Agreement is to be governed by and interpreted in accordance with the laws of the State of North Carolina.

Section 9.4. ***Time is of the Essence.*** Time is of the essence in this Interlocal Agreement.

Section 9.5. ***Execution in Multiple Counterparts.*** This Interlocal Agreement may be executed in multiple counterparts, each of which constitutes a completed document.

Section 9.6. ***Effective Date.*** This Interlocal Agreement takes effect on its execution by the County and the Town.

Section 9.7. ***Termination.*** This Interlocal Agreement shall terminate under either of the following two (2) circumstances: (1) when all of the following events have occurred: (a) the completion of all of the Projects as evidenced by certificates of completion issued to the County and the Town by the Project Manager, (b) the balance in the Construction Fund is zero, and (c) all duties and responsibilities of the County and Town set forth in this Interlocal Agreement have been completed or waived in writing by the parties; or (2) the date on which the County and Town mutually agree to terminate this Interlocal Agreement by action of their respective governing boards or councils.

Section 9.8. ***Public Information.*** All public information related to the Projects shall be the responsibility of the Town.

IN WITNESS WHEREOF, the Chairman of the Board of Commissioners of the County and the Mayor of Southern Shores have each executed this Interlocal Agreement to evidence the agreement of the parties hereto and the respective Town Clerks and the Clerk to the Board of County Commissioners have affixed the seal of the Town and the County, as applicable, to this Interlocal Agreement.

COUNTY OF DARE, NORTH CAROLINA

[SEAL]

By:_____
Chairman

Attest:

_____
Clerk to the Board of County Commissioners

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

_____
Finance Officer
County of Dare, North Carolina

[SEAL]

TOWN OF SOUTHERN SHORES, NORTH CAROLINA

By: _____
Mayor

Attest:

_____
Town Clerk

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

_____
Finance Officer
Town of Southern Shores, North Carolina