

NORTH CAROLINA
Dare County

**FIRE SERVICES CONTRACT BETWEEN THE TOWN OF
SOUTHERN SHORES, AND THE SOUTHERN SHORES
VOLUNTEER FIRE DEPARTMENT, INC.**

THIS CONTRACT AND AGREEMENT (this "Contract") made and entered into this First Day of February 2009, by and between Town of Southern Shores, (the "Town"), and the Southern Shores Volunteer Fire Department, Inc., (the "Fire Department").

WITNESSETH:

THAT WHEREAS, N.C.G.S. 160A Article 3, Sections 16-19 provides that a Town may enter into continuing contracts and pursuant to this authority, the Town may enter into a continuing contract with a volunteer fire department and may make annual appropriations of such funds as may be provided for in this Contract; and

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained and pursuant to the general power and authority of the Fire Department to furnish fire fighting services and the general power and authority of the Town Council to provide fire protection for its inhabitants and owners of property within Southern Shores, the parties hereto mutually contract and agree as follows:

(1) CONTRACT TERM — The effective term of this Contract shall, upon the execution of this Contract by all parties begin on February 1, 2009 and shall extend for ten (10) years from the first day of July 2009. A Contract Year shall be considered to be a fiscal year running from July 1st of one calendar year through June 30th of the following calendar year.

(2) SERVICES PROVIDED — The Fire Department agrees to furnish and provide continuing fire protection service to all properties lying within the incorporated limits of Southern Shores, N.C., by promptly dispatching, upon call from the Dare County Central Paging System or upon notification of fire or emergency by any other means, the Fire Department's fire fighting and rescue equipment and adequate personnel to operate the same, and then making diligent efforts to control and extinguish all fires and control or mitigate emergencies.

(3) MANNER OF PROVIDING SERVICES - The Fire Department, in providing the said services in a manner that is consistent with the Town's Emergency Management Plan, shall use its own means and methods, which shall not be subject to control, direction or supervision by the Town. All fire fighting equipment and personnel necessary and proper for the performance of this Contract shall be provided by the Fire Department at its sole cost and expense, and all persons engaged in fighting fires pursuant to the provisions of the Contract shall be subject to the exclusive control, direction and supervision of the Fire Department. The Town shall not have any right or power with respect to the employment, control, direction, supervision, suspension or discharge of any person who may engage in fire fighting services or activities in the performance of the obligations imposed by this Contract upon the Fire Department in furnishing fire fighting services to the Town for the benefit of its residents and property owners.

(4) PROHIBITING INTERFERENCE WITH FIRE DEPARTMENT - The Town will adopt such rules and regulations, by ordinances or otherwise, as may be necessary and proper to prohibit interference with personnel of the Fire Department in the discharge of their duties in fighting fires within the Town, to prohibit damage to and interference with

the fire fighting equipment and apparatus of the Fire Department and to provide for such other rules and regulations as necessary for the furtherance of the objectives of this Contract.

(5) LONG TERM DEBT – The Fire Department shall not be restricted in its ability to encumber assets or commit to debt so long as its Debt Ratio remains less than 1.0. The Debt Ratio is calculated by using the following formula:

$$\text{Debt Ratio} = \text{Total Debt} / \text{Total Assets}$$

If the Fire Department wishes to commit to new debt that would cause its Debt Ratio to exceed 1.0, then the Fire Department must first receive the prior approval of the Town Council before doing so. If the Town does not provide approval, the Fire Department will not commit to or issue new debt until and unless doing so will not increase its Debt Ratio above 1.0, or it receives subsequent permission from the Town Council. The Town through its manager or the Town Council upon reasonable notice may request that the Fire Department provide the Town with its current Debt Ratio and the Fire Department shall respond to such a request within a reasonable time, not to exceed fourteen (14) business days.

(6) PRESENTATION OF BUDGET AND YEARLY AUDIT - The Fire Department will present the Town with a budget annually and a fiscal year end audit.

(a) The budget will be in a form and level of detail that is mutually agreed upon and include, at a minimum, revenue and expenses for operations, capital and debt service. The budget shall be submitted using the same time schedule required of Town departments. The budget shall provide sufficient information for the Town to calculate the Debt Ratio referenced in this Contract. The Fire Department shall provide a person familiar with the budget to appear before the Town Council at the Town Council's request to discuss the budget in open session of a public meeting of the Town Council.

(b) The fiscal year end financial audit shall be conducted by a reputable CPA firm. Said audit shall result in the production of a written audit report. The audit report shall provide sufficient information for the Town to calculate the Debt Ratio referenced in this Contract. The Fire Department will use its best efforts to assure that a copy of the written audit report shall be presented to the Town no later than November 1st of each Contract Year.

(7) DEVELOPMENT OF STRATEGIC PLAN - Town and Fire Department explicitly acknowledge that the Fire Department is facing significant capital projects during the term of this Contract, including those itemized in Attachment 1 to this instrument, entitled Southern Shores Volunteer Fire Department, Strategic Plan. The Fire Department shall provide for participation by the Town in the development and finalization of the priorities and the sources and availability of funding for those needs.

(8) COMPENSATION TO FIRE DEPARTMENT- Except as otherwise provided in this Section, the Fire Department's compensation under this Contract shall be calculated annually as of the first day of July by using an effective tax rate, expressed in cents per hundred dollars (hereinafter "effective tax rate") multiplied by the taxable value of property within the Town after adjustment for a 99.5% collection rate (hereinafter "Property Tax Base") per year.

(a) For the period beginning February 1, 2009 and ending June 30, 2009, the Town shall pay \$25,000 per month in five monthly payments. Payments shall be due on or before the fifteenth day of each month.

(b) For the Contract Year beginning July 1, 2009 and ending June 30, 2010, the compensation of the Fire Department shall be \$300,000. For said fiscal year, the Town shall make

two equal payments to the Fire Department in July and January each totaling \$150,000. Payments shall be due on or before the fifteenth day of both months.

(c) For the Contract Year beginning July 1, 2010 and ending June 30, 2011, the effective tax rate shall be two cents (\$0.02) per hundred and the Town shall make two equal payments to the Fire Department in July and January each totaling one half of the annual amount. Payments shall be due on or before the fifteenth day of both months.

(d) Annually, following the submission of the Fire Department budget request, the Town Council shall determine if the then current effective tax rate is sufficient to fund the needs of the Fire Department. The Fire Department may request adjustments in the effective tax rate annually during the budget process. The burden of proof in establishing the need for any increases shall be upon the Fire Department. The Town Council may accept, modify or decline any request for adjustment of the effective tax rate, no later than April 1st of each year, provided that the Fire Department may request and Town agrees to grant a public hearing regarding any such request.

(e) If during the term of this contract and any extensions thereto, a reassessment is conducted which causes an adjustment up or down in the taxable property within the Town, the effective tax rate shall be adjusted to compensate for the change in values so that the resulting effective tax rate is revenue neutral to the Fire Department.

(f) Once the Town Council has established a new effective tax rate, such rate shall become the basis for continuing annual funding of the Fire Department until modified through the budget process contained in this Contract.

(g) The Fire Department reasonably relies on the predictable continuation of funding under this Contract to service long-term commitments that serve the mutual interests of the Town, other customers and the Fire Department. At no time during the term of this Contract will the effective tax rate be decreased from the amount specified in the previous year, without specific written agreement of the Board of Directors of the Fire Department.

(h) From time to time the Fire Department may encounter unusual financial needs beyond its reasonable control. These may include, but are not limited to, new regulatory requirements, industry-wide cost increases for items such as fuel and insurance. When the Fire Department becomes aware of such needs beyond its reasonable control, it may report those needs to the Town, together with options and a plan to meet those needs. The Town, at its sole discretion may choose, but shall not be required to adjust the effective tax rate for the remainder of the fiscal year or make a grant to the Fire Department for any portion of such needs that are associated with providing services under this Contract.

(i) The Fire Department may seek other sources of revenue including, but not limited to, gifts, donations, grants, additional customers and fees for service.

(i) Fees may be assessed of any person, corporation or entity for extraordinary expenses incurred when mitigating an emergency situation. Examples include the rental or purchase of specialized equipment (i.e.: cranes, heavy equipment, boats for rescues, lumber and tools for shoring of structures, etc.), and for the use of items and supplies that are likely reimbursable by insurers, (i.e.: foam concentrate, FIT-5, etc.).

(ii) The Fire Department may also charge fees of Town taxpayers, provided that a fee schedule is first presented to the Town and approved by the Council during the budget process or some other mutually agreeable time. Fees of this type may be established for multiple nuisance fire alarms, property inspections and similar occurrences and will be reviewed at least annually during the budget process.

(iii) The Fire Department may also establish a fee schedule for certain types of responses and services, (i.e.: traffic accident, extrication, etc.) provided that persons and corporations who pay property taxes to the Town shall be exempted from such service charges.

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

(10) ESTABLISHMENT OF FIRE DISTRICT- During the first twelve months of this Contract Town and Fire Department will diligently analyze and use best efforts to determine if inclusion of the Town in the Fire District, which currently serves Martin's Point is a substantial benefit to the Town. If such a determination is made at any time during this Contract the parties may undertake such inclusion by mutual agreement to petition the County to expand the Fire Protection District to include the Town.

(11) AVAILABILITY OF RECORDS- The Town or any resident thereof may inspect the financial records of the Fire Department by appointment with the Treasurer or leadership of the Fire Department with reasonable notice and during business hours.

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

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

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

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

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

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

(v) Umbrella Liability: Coverage shall have a minimum limit of \$1,000,000.00 with underlying coverages of compensation/employers liability.

(b) Additional special requirements shall be as follows:

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

(ii) The Fire Department shall maintain current, valid insurance policies meeting the requirements stated above during the entire duration of this Contract. The Fire Department shall insure that for any policy of insurance held by the Fire

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

(13) EVENTS OF TERMINATION-- This Contract shall terminate upon any of the following events:

- (a) The dissolution, insolvency or bankruptcy of the Fire Department;
- (b) The dissolution, insolvency or bankruptcy of the Town;
- (c) Inclusion of the Town in a Fire Protection District in which fire protection services for the Town and its citizens will be provided by Dare County through any means allowed by law for Dare County to provide such services;
- (d) The expiration of one hundred eighty (180) days after the Fire Department's receipt of written notice that the Town has adopted a resolution establishing a municipal fire department;
- (e) The expiration of one hundred eighty (180) days after the Fire Department's receipt of written notice that Town intends to use another entity to provide its fire services;
- (f) The parties entry into a new written agreement which expressly supersedes this Contract; or
- (g) The expiration of this Contract without the parties' written agreement to renew the terms of this Contract.

(14) EFFECTS OF TERMINATION-- Upon the termination of this Contract all obligations of the parties to this Contract shall cease except for those obligations created by this Section:

(a) DISTRIBUTION OF ASSETS/LIABILITIES - Upon termination of this Contract for any event of termination the assets and liabilities of the Fire Department shall be disposed of as follows:

Distribution based on Section (13) - The Fire Department shall convene and facilitate a meeting of its contracted customers including the Town, Dare County,

acting on behalf of the citizens of Martin's Point and any other municipalities or entities with which the Fire Department contracts to provide Fire and Rescue services. At that meeting, and any subsequent meetings, the parties will develop a fair division of assets of the Fire Department and a plan to assure continued Fire and Rescue services within each jurisdiction. If requested by the customers the Fire Department will provide, at the Fire Department's expense, a neutral third party administrator, acceptable to all customers, with expertise in implementation and provision of Fire and Rescue services, to assist in the development of the plan, evaluation and distribution of assets and establishment of any contracts or agreements required. The Fire Department shall cooperate fully with the distribution of assets and implementation of the plan developed during this process.

Town and Fire Department expressly agree that one goal of the process for dissolution of the Fire Department outlined herein is to assure that all assets and liabilities are fairly distributed and discharged so as to satisfy any and all encumbrances and financial responsibilities of the Fire Department at the time of dissolution.

Town specifically agrees that the funds invested on behalf of the Fire Department's members in the Length of Service Annuity Plan (LOSAP) will not be subject to distribution among the customers of the Fire Department, but will be distributed to the Fire Department members or in a manner that the members direct.

Fire Department agrees that should it contract with additional new customers, it will not agree to terms in new contracts that contain provisions regarding the distribution of assets that are used to serve the Town that give the new customers rights that are more than equal to those of the Town. New customers may participate in the process described herein with the same rights as the Town.

Assets directly contributed or funded by new customers and assets not used in or related to service to the Town may be exempted from this provision by terms of new customer contracts. For example, if a new customer in a new geographic area contributes a station and fire apparatus to the Fire Department for use in its own jurisdiction, that customer may be given preferential rights regarding that specific station and equipment, including reversion rights.

(b) ASSET OBLIGATIONS- The Town warrants that it will fulfill all obligations and requirements and meet all terms and conditions required by the Federal Emergency Management Agency, the Federal or State government in regard to any vehicles, equipment or property that has been acquired using grant funding, if such assets are actually conveyed to the Town.

(b) INDEMNIFICATION- The Town agrees that it will, to the extent authorized by law, assume all responsibility for all assets and obligations actually conveyed to the Town. Town further warrants that to the maximum extent authorized by law, it will protect, hold harmless, indemnify and defend the Fire Department, its Board of Directors, Officers and members from all liabilities, without limit, related to the condition of or use by the Town of any assets, or responsibility for obligations conveyed to the Town.

(c) REMAINING ASSETS- If the Fire Department is dissolved, any assets not conveyed to its customers under the terms of this Contract will be disposed of as required by State Law. If the Town establishes a Town Fire Department it shall not have any rights to assets of the Fire Department except as provided in this Contract.

(d) PROTECTION OF ASSETS - During any period following notice of impending termination of this Contract for which obligations of the Fire Department continue, the Fire Department shall not take any action to dispose of or

otherwise reduce the value or encumber any assets that may be conveyed to the Town pursuant to this agreement with the intent or purpose of avoiding or reducing the Town's interest in such asset.

(15) RIGHTS TO ASSETS AND FINANCIAL RESPONSIBILITY-Other than as specifically set forth in this Contract, the Town has no claim or other rights related to the property and assets of the Southern Shores Volunteer Fire Department, Inc. Except as specifically set forth in this Contract, the Town will have no financial responsibility for or control over the debts, encumbrances or liabilities of the Fire Department. If in the future the Town specifically agrees to co-sign or guarantee some future loan, lease, bond or financial instrument, the Town shall have the right to make conditions and exercise control over such obligations, which it guarantees.

(16) RELATION TO PRIOR CONTRACTS — This Contract replaces and supersedes all previous contracts entered into between the parties for the provision of fire services to the Town by the Fire Department.

(17) NEGOTIATION OF FUTURE CONTRACTS – If the parties have not negotiated a new agreement or renewal of this Contract then the parties shall enter into good faith negotiations for the same at least one hundred eighty (180) days prior to the end of the contract term. The Fire Department shall initiate said negotiations.

IN TESTIMONY WHEREOF: The Southern Shores Volunteer Fire Department, Inc., has caused this instrument to be executed in its name and behalf by its Chairman of the Board, attested by its Secretary and its corporate seal affixed hereto all as the act and deed of said Corporation, and the Town of Southern Shores, a municipal corporation of the State of North Carolina has caused this instrument to be executed in its name and behalf by its Town Manager, attested by its Town Clerk, and its corporate seal affixed hereto as the act and deed of the said Municipality.

SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.

BY: *Kengo Sakaki*
Chairman of the Board

ATTEST:

Harold Sanderson
Secretary
(corporate seal)



TOWN OF SOUTHERN SHORES

BY: *Andrew Bell*
Town Manager

ATTEST:

Carrie Hedin
Town Clerk
(corporate seal)



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

Bonnie M. Swan
Town Finance Officer