NORTH CAROLINA

DARE COUNTY

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

Bonnie Swain
Finance Director

CONTRACT FOR LEGAL SERVICES

This Agreement for the employment of Town Attorney is entered into the 2 day of June, 2015, by and between Town of Southern Shores, North Carolina, a body corporate and politic existing pursuant to the laws of the State of North Carolina (hereinafter "Town"), and Hornthal, Riley, Ellis & Maland, L.L.P. (hereinafter collectively referred to as "Attorney") and is effective as of the 1 day of July, 2015.

RECITALS

1. Town is in need of the legal assistance of a law firm to fill the position of Town Attorney.

2. The law firm is desirous of filling that position.

3. The parties desire to memorialize their agreement as hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants expressed herein it is agreed as follows:

1. **Term of Employment:** It is the agreement and understanding of the parties, that this is an appointed position and may be terminated at will by the Town provided, however, Attorney shall not cease employment in such manner as to prejudice any legal positions, whether by litigation or otherwise, the Town may be maintaining through the Attorney. In this regard, the Attorney shall not withdraw from any litigation, negotiations, drafting or the like without the specified permission of Town, if to do so would prejudice Town's position.

2. **Services:** Attorney shall provide to Town such legal services as Town requires and requests.

3. **Independent Contractor Status:** Attorney offers its services as an independent contractor and Town has no liability for payment of any benefits that would normally accrue to its employees by virtue of their employment with the Town.

4. **Reimbursement and Billing:** Attorney, including its partners, associates and paralegals, shall be reimbursed as follows:

a. A non-refundable retainer of $2,500.00 per month shall be paid to Attorney by the Town for the provision of any legal services including representation at meetings upon request and communications with Town staff and officials. Attorney shall submit monthly invoices to the Town indicating all work performed and actual expenses incurred. The invoices shall indicate legal services performed at the rate of $175.00 per hour, paralegal services at a cost of $95.00 per hour, law clerk services at $105.00 per hour and the amount of actual expenses incurred. All fees for services shall be debited from the retainer first, with any remaining fees invoiced in excess of the expended retainer. Actual expenses shall be billed and paid without regard to the retainer.

b. Beginning June 1, 2016 the hourly rate for legal services shall increase to $180.00 per hour and on June 1, 2017 the hourly rate of legal services shall increase to $185.00 per hour.

5. **Expectations:** Attorney recognizes the need of Town for accessibility and prompt service. To this end, it shall be the obligation of Attorney to diligently return phone calls, be available upon request, and otherwise meet reasonable deadlines imposed by the Town. Benjamin M. Gallop, partner of the firm, shall be primarily responsible for providing the requisite services to the Town. However, Town understands it is hiring the firm as opposed to an individual attorney. In the event of Mr. Gallop's unavailability, the Town shall seek advice from other Partners or Associates within the firm who shall comply with the Town's needs.

6. **Organization and Access to Services:** Attorney represents the Town Council and not administration. However, the Attorney shall be assigned legal tasks by the Town Manager pursuant to instructions from the Town Council and unless requested to the contrary, shall report to the Town Manager as to the progress and status of legal matters. In the event

Attorney recognizes a legal matter it deems in need of attention, the same shall be reported to the Town Manager for permission to proceed. Except in emergency situations, Attorney shall not initiate any legal action, or maintain any position on behalf of the Town, without the permission of the Town Council pursuant to the instruction of the Town Manager.

7. **Non-exclusive Obligation:** It is agreed and understood that Attorney is a private law firm with a substantial and varied practice. Nothing herein shall be construed as to prohibit the Attorney from continuing to serve its other clients and promote its practice outside representation of Town.

8. **Conflict of Interest:** During its representation, Attorney shall not undertake any new representation in conflict with the Town or any of its agencies. In the event a conflict of interest is discovered as a result of prior representation, the same shall immediately be reported by Attorney to the Town Manager. If the conflict is ethically irreconcilable, the Attorney shall not represent either the Town or its other client in the controversy.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ATTEST:

Town Clerk

TOWN OF SOUTHERN SHORES

By: J. Peter Rascoe, III, Town Manager

TOWN OF SOUTHERN SHORES SEAL N.C.

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

By: Benjamin M. Gallop, Partner