



# TOWN OF KILL DEVIL HILLS

*Land Where Flight Began*

MEMORANDUM

December 12, 2016

TO: Mayor and Board of Commissioners

FROM: Debora P. Díaz, Town Manager 

REF: Consent Agenda

**1. Minutes (Attached CA-1A)**

A. November 14, 2016

**2. In-kind Services Agreement – disc golf course (Attached CA-2)**

The Board of Commissioners was notified on November 16, 2016 that on behalf of the Town, Assistant Town Manager Shawn Murphy had executed an In-Kind Services Agreement with Advanced Tree Service, Inc. for a retail value of \$15,000 in tree removal services for the right to sponsor the parking lot at the Town's disc golf course.

Approval of the consent agenda will record the terms of the in-kind services agreement.

**3. Interfaith Community Outreach, Inc. – Property Tax Exemption**

This non-profit organization has applied for and been approved for a property tax exemption by the Dare County Board of Commissioners for release of the 2016 tax bill and subsequent years.

Approval of the consent agenda will record Kill Devil Hills' approval of the exemption as well.

Staff recommends approval of the Consent Agenda as presented and a motion would be in order.

**Minutes of the Monday, November 14, 2016 regular meeting of the Kill Devil Hills Board of Commissioners held at 5:30 o'clock p.m. in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road.**

**Members Present:** Mayor Sheila F. Davies; Commissioners Travis Appleman, Mike Hogan, Michael Midgette, and Brandi Rheubottom

**Members Absent:** None

**Others Present:** Debora P. Diaz, Town Manager; Casey Varnell, Town Attorney; Meredith Guns, Planning Director; Mary E. Quidley, Town Clerk

**Call to Order**

At 5:30 p.m. Mayor Davies called this meeting of the Kill Devil Hills Board of Commissioners to order and welcomed all present.

**Pledge of Allegiance and Moment of Silence**

After the Pledge, Mayor Davies reminded all of the resolution placed under the Mayor's Agenda, which states Kill Devil Hills' support for improved veterans' health care. Last Friday was Veterans Day and their service to this country is incredibly important and worthy of inclusion in the Moment of Silence this evening.

Mayor Davies also asked the audience to remember the passing of Commissioner and former Chair of the Dare County Board of Commissioners Warren Judge. Mr. Judge served the people of Dare County for many years in many different capacities and was a well-respected, well-known member of the Outer Banks community.

**Agenda Approval**

Commissioner Hogan made a motion for the Board of Commissioners to approve the agenda for this meeting as submitted. Commissioner Rheubottom seconded that motion and approval was unanimous, 5-0.

**Public Hearing**

**1. Proposed amendment to beach nourishment municipal service district and first required vote (Attached PH-1)**

The Town proposes to remove 13 properties from the established municipal service district (MSD), and to adopt a map depicting the new boundaries of the MSD. This map will reflect removal of a total of 37 properties from the established MSD, including 24 properties that were removed from the district on June 2, 2016 in Consent Judgments as a result of compromise

settlement of litigation matters. All 37 of these properties are within or adjacent to the southern-most 1,000 linear feet of the MSD, commonly known as *The Taper*. Within *The Taper* properties were designated to receive lesser amounts of nourishing sand than the properties within the district to the north, outside of *The Taper*. *The Taper* properties were taxed at the same rate as properties within the district receiving the full benefit of sand placement.

Town Attorney Casey Varnell called this public hearing to order and read aloud the rules of procedure to be followed. There were no speakers from the audience or the Board of Commissioners and Mr. Varnell closed the public hearing.

Mayor Davies called for action from the Board.

Commissioner Appleman made a motion for the Board of Commissioners to approve, on this first vote, the attached ordinance, *An Ordinance Reducing the Town of Kill Devil Hills, North Carolina Beach Erosion Control and Flood and Hurricane Works Municipal Service District, including four exhibits: A – properties removed as a result of Consent Judgments; B – properties to be removed by adoption of the ordinance; C – map depiction of all properties; and, D – map depiction of the revised MSD*, as presented. Commissioner Midgette seconded that motion and approval was unanimous, 5-0.

The second vote will be scheduled for the Monday, December 12, 2016 meeting.

## **Public Comment**

**Deborah Mennicucci, 206 Clamshell Drive, Kill Devil Hills:** Ms. Mennicucci's comments addressed the Outer Banks Pro Wash, not far from her home. The car wash fronts US 158 and her home is located in the general vicinity in back of the car wash property. There is a great deal of noise that comes from the business since it was switched to a system that announces the various processes during each wash. She expressed appreciation to the Town's Police Department and the success they had in getting the speaker system turned down.

Ms. Mennicucci described a relatively inexpensive device called an FM transmitter that could be used by the owner to minimize the loud announcements emanating from the business.

Ms. Mennicucci submitted an e-mail from a neighbor, which supported her complaint. The e-mail was from the Rutherford's, 200 Clamshell Drive, and it explained that since the car wash facility upgraded its service the noise has only gotten louder. It is very repetitive and very annoying. The Rutherford's also suggested the owner of the car wash utilize an FM transmitter. The Rutherford's e-mail is included with the record of this meeting.

## **Response to Public Comment**

Assistant Police Chief Dana Harris addressed the Board, explaining that the Police Department had taken decibel readings at the property several times, and some violations of the Town Code have been noted. The owners have taken steps to reduce the noise levels. Assistant Chief Harris also pointed out that the level of noise generated by commercial establishments is higher than that allowed by residential properties. He believes that the FM transmitter would be a useful tool that could greatly reduce the noise levels at the car wash.

Mayor Davies assured Ms. Mennicucci the Town would stay on top of this issue and communicate with the owner to get the matter resolved.

### **Introductions and Presentations**

#### **1. Recognition of Kill Devil Hills Police Department for assistance with Dare County Motorcycle Toy Run**

Kill Devil Hills' resident and avid motorcyclist Ron Wright attended this meeting to present a Certificate of Appreciation to Assistant Police Chief Dana Harris. Former Kill Devil Hills Mayor Terry Gray was scheduled to make the presentation; however, Mr. Wright explained that Mr. Gray could not attend due to health concerns. On September 24, 2016, a group of 100 Dare County motorcyclists participated in a Motorcycle Toy Run to benefit underprivileged children in Dare County. A great deal of money and donated value was raised by the group to benefit the children through the Outer Banks Women's Club and the US Marine Corps Reserve's *Toys for Tots* program. These individuals were assisted by law enforcement personnel throughout their travels with traffic control measures, and Mr. Wright presented a plaque to Assistant Chief Harris to recognize our Police Department for their efforts to make this event safe for all and also for Chief Harris' personal involvement and dedication.

A video of the event was also shown. The Town will link the video off its Facebook page and distribute the link electronically.

### **Old Business**

### **New Business**

#### **1. Site plan review (Attached NB-1A)**

##### **A. First Flight Hotel, LLC – proposed 152 room hotel with 226 parking spaces, oceanfront amenity building and associated site modifications – 2028 and 2031 South Virginia Dare Trail**

Over the course of two meetings, the Planning Board reviewed this site plan for a 152-room hotel, with 226 parking spaces and associated site modifications, to be located at 2028 and 2031 South Virginia Dare Trail. Approval of the proposed development was recommended at the Planning Board's November 1, 2016 meeting. Two conditions for approval were included in the recommendation and the developer, Ratnam Patel, has agreed to address them.

Assistant Planning Director Bryan Brightbill's packet memorandum referenced several informational items related to this site plan and they are included with the packet on the Town's website.

Staff recommended the Board of Commissioners approve the site plan for the *First Flight Hotel, LLC – proposed 152 room hotel w/226 parking spaces, oceanfront amenity building and*

associated site modifications – 2028 and 2031 South Virginia Dare Trail subject to the following conditions being satisfied prior to issuance of a building permit:

- Correct side yard setbacks on hotel side of the proposed development to 34 feet in accordance with the requirements of §153.181(C)(1) Side yard; and
- Prepare water meter service sizing forms for each domestic meter including all proposed fixtures connected to each to confirm proposed sizing.

Commissioner Hogan made a motion for the Board of Commissioners to approve the site plan for *First Flight Hotel, LLC – proposed 152 room hotel with 226 parking spaces, oceanfront amenity building and associated site modifications – 2028 and 2031 South Virginia Dare Trail* with conditions outlined above. Commissioner Appleman seconded that motion and approval was unanimous, 5-0.

On behalf of the developer, local businessman Eddie Goodrich thanked the Board of Commissioners for their action. He added that he felt the hotel will be a great asset to the Town, and that it is a much-needed addition to our community.

**2. Recommendation for bid acceptance for 2016/2017 street, drainage and right-of-way improvements project (Attached NB-2)**

Plans, specifications and authorization to bid the 2016/2017 streets, drainage and right-of-way improvements project were approved by the Board of Commissioners on February 8, 2016. The project includes improvements on Mustian Street, West Clark Street, West Carlton Street, Cooke Place, Anchor Court and Schooner Court for which the details are included in Public Services Director Steve Albright’s attached memorandum. Bids were received on October 27<sup>th</sup> and have since been reviewed by Staff and the Town’s engineer, Pete Burkheimer of American Engineering. Staff and Mr. Burkheimer recommended award of the contract for the base bid to the lowest responsible bidder, RPC Contracting, Inc. The overall project total is estimated to not exceed \$693,006.

<b>2016/2017 Project</b>	<b>Streets &amp; Drainage</b>	<b>Water</b>	<b>Total</b>
RPC Contracting, Inc. – Base Bid	\$540,850	\$81,550	\$622,400
Contingency	\$32,451	\$8,155	\$40,606
Engineering	\$15,000	\$15,000	\$30,000
<b>Grand Totals</b>	<b>\$588,301</b>	<b>\$104,705</b>	<b>\$693,006</b>

Substantial completion is scheduled for April 11, 2017.

Staff recommended the Board of Commissioners accept the bid from RPC Contracting, Inc., and authorize the 2016/2017 streets, drainage and right-of-way improvements project to move forward.

Commissioner Midgette made a motion for the Board of Commissioners to accept the bid from RPC Contracting, Inc. and authorize the 2016/2017 streets, drainage and right-of-way improvements project, as follows:

- Approve the contract with RPC Contracting, Inc. for 2016/2017 street, drainage, and right-of-way improvements project, as presented above, in the amount of \$622,400 and authorize its execution by the Town Manager;
- Approve the engineering services agreement with American Engineering in the total amount of \$30,000 for construction oversight services;
- Approve a 6% not-to-exceed contingency for the streets and drainage portions of the project in the amount of \$32,451; and
- Authorize expenditure of \$370,301 from the Street Capital Reserve Fund to accomplish this project (\$104,705 will be Water Fund related expenses; \$218,000 will be expended from the Powell Bill line; \$370,301 will be expended from the Streets Capital Reserve Fund, for a total of \$693,006).

Commissioner Appleman seconded that motion and approval was unanimous, 5-0.

Mayor Davies commented on how quickly Kill Devil Hills recovered from the rainfall deluge associated with Hurricane Matthew. Our recovery is a testament to the streets and drainage improvements made in Kill Devil Hills, and the long-term commitment made by the current and former Boards of Commissioners to continually making these improvements, which have proven to make a difference.

Mr. Burkheimer related a personal story about his father who was an armed services veteran for the United States after service in Europe in World War II, and about his own service years later in Vietnam and Fort Bragg, NC. Mr. Burkheimer appreciated the comments made by Mayor Davies earlier in the meeting, and the resolution included under the *Mayor's Agenda* in support of improved health care for our veterans. Generally, he explained, veterans do not accept being described as *heroes*, they consider themselves as just one of many doing their job in the manner required by their country. There are armed services heroes, Mr. Burkheimer added, and they are the ones who make extraordinary sacrifices and take extraordinary risks to complete the duties to which they were assigned. To honor veterans, resolutions and proclamations are fine, Mr. Burkheimer stated, but the very best way is for the American people to be outstanding citizens – to vote, to take an interest in our government at all levels, and be nice to one another.

### **3. NC Division of Emergency Management Resolution [on] Designation of Applicant's Agent (Attached NB-3)**

This North Carolina Division of Emergency Management resolution authorizes Planning Director Meredith Guns and Administrative Specialist Ron Farley to execute and file applications for federal and/or state assistance on behalf of the Town if and when needed.

Staff recommended adoption of the Resolution [on] Designation of Applicant's Agent as presented.

On motion by Commissioner Rheubottom, seconded by Commissioner Midgette, the *NC Division of Emergency Management Resolution [on] Designation of Applicant's Agent* was approved as presented by unanimous vote, 5-0.

## **Commissioners' Agenda**

### Commissioner Midgette

- Tonight is the "super moon" and he brought his telescope, which he will set up after the meeting for anyone interested. The surface of the moon should be quite visible, provided the clouds aren't in the way.

## **Mayor's Agenda**

### **1. Resolution Calling for Improved Health Care for Veterans (Attached MA-1)**

A corresponding version of this resolution was adopted by the Dare County Board of Commissioners and then forwarded to the other Dare County local governments for consideration of support.

Mayor Davies' recommended the Kill Devil Hills Board of Commissioners also take action in this matter by adopting the attached resolution. Upon adoption copies will be distributed as stated in the last paragraph, to other Dare County local governments and the Dare County Veterans Advisory Council, Dare County Veterans Affairs Office, posted on Town bulletin boards, distributed electronically and through social media.

Commissioner Hogan made a motion for the Board of Commissioners to approve the Resolution Calling for Improved Health Care for Veterans and Commissioner Rheubottom seconded that motion. Approval was unanimous, 5-0.

### **2. Update items**

#### **A. Toys for Tots**

Kill Devil Hills will be participating in the United States Marine Corps Reserve Toys for Tots campaign! There will be three Toys for Tots boxes in place at Town facilities locations for new, unwrapped toy donations.

Also, by participating, you can help Kill Devil Hills win a friendly competition with other local municipalities to see which can collect the most toys! This event is being coordinated through The Dare County Center in Manteo.

#### **B. Veterans Day Celebrations**

The Mayor's packet memorandum included information on Veterans Day events in Dare County.

### **C. Santa at the Town Hall**

We are looking forward to Santa's arrival on Saturday, December 10<sup>th</sup>. He will be at the Town Hall, greeting children, passing out goodie bags, and taking pictures with families. Warm cider, fresh cookies, and other small refreshments will also be provided. The Town's holiday lights display and our 25-foot tall tree will be set up at Aviation Park.

Along with the Toys for Tots program, this year Santa at the Town Hall will be collecting items needed at the SPCA and the Town's Animal Shelter, including: dry and canned food for cats and dogs, kittens and puppies; cat litter, cat toys, dog toys, peanut butter, towels, small carriers for cats, laundry detergent, bleach, hand soap, blue Dawn dish detergent (for bathing animals), paper towels, and Lysol wipes.

### **Town Manager's Agenda**

#### **1. Expansion of security access control system (Attached TM-1)**

The Town Manager explained that expansion of the Police Department's existing security system to the Town Hall, Public Services Administration Building, and Ocean Rescue Building can occur simultaneously with the planned installation of the same system during completion of the Public Works Complex Phase II project. Improvements are for installation of electronic door locking and switching operated by proximity cards and monitored through computers systems as designed for secure facilities control. Working with the same company will be helpful toward smooth implementation and activation of the entire system as necessary hardware and software compatibility at multiple locations will be assured.

Expenses to install the security system at the Public Works Complex will be funded through the project's contingency line. Staff proposes to liquidate an existing and no longer funded capital improvement reserve fund in the amount of \$20,135.75, along with an appropriation of \$16,564.25 from undesignated fund balance, for a total of \$36,700, to complete security improvements on the other listed general fund facilities. To accomplish improvements at the Public Services Administration Building, funds will be moved from retained earnings to an expense account.

Staff recommended approval of the attached budgets amendments, #3 and #4, to appropriate funds for expansion of the security system.

Commissioner Appleman made a motion for the Board of Commissioners to approve budget amendments #3 and #4, as presented. Commissioner Midgette seconded that motion and approval was unanimous, 5-0.

### **Town Attorney's Agenda**

### **Consent Agenda**

#### **1. Minutes (Attached CA-1A)**

- A. October 12, 2016
- 2. **Schedule for public hearing on December 12, 2016 – historic landmark designations ordinances (Attached CA-2A and 2B)**
  - A. 2306 North Virginia Dare Trail – Smith Cottage
  - B. 418 West Hayman Boulevard – Hayman House

Approval of the Consent Agenda will schedule these two items for public hearing on Monday, December 12, 2016 at 5:30 p.m. in the Meeting Room at the Administration Building.

Staff recommended approval of the Consent Agenda as presented.

Commissioner Hogan made a motion for the Board of Commissioners to approve the Consent Agenda as submitted. Commissioner Appleman seconded that motion and approval was unanimous, 5-0.

The Town Manager encouraged anyone interested to visit the Town's website to learn more about the houses proposed for historic designation. Planning Director Meredith Guns puts together a great deal of information that may be viewed online at [www.kdhnc.com](http://www.kdhnc.com), by accessing the materials for this meeting.

### **Public Forum**

- 1. **Public Forum (Attached PF-1A)**
  - A. **Dogs on the beach**

On July 11<sup>th</sup> the Board of Commissioners discussed the issue of dogs on the beach and agreed to consider it further this fall. Attached to this memorandum is a copy of the minutes of the July 11<sup>th</sup> meeting pertaining to this subject. The packet materials for that meeting can be accessed through the Town's website.

Since July, one e-mail comment on the issue of dogs on the beach has been received and it is attached to this memorandum. It does not support increasing the hours during which dogs would be allowed on the beach. Anyone inquiring about the matter has been advised that it will be revisited at this meeting.

**Patti Armistead, 1605 Wood Duck Lane, Kill Devil Hills:** Ms. Armistead asked the Board to relax the Town's regulations on dogs being allowed on the beach. She felt the existing regulations to be a hardship on members of the working public, many of whom work until late hours of the night and find it difficult to enjoy beach time with their dogs within the existing schedule. She cited statistics on pets kept in homes; marketing strategies used on the Outer Banks to draw visitors here because of pet-friendly accommodations yet restrictions keep the

dogs from being able to go on the beach in KDH most of the day; and, unpleasant experiences by visitors who have had issues with existing regulations.

Ms. Armistead felt the existing regulations could be unlawful as people walking their pets along the waterline should be able to do so and be protected by the Public Interest Doctrine [sic]. Further, she pointed out that one would not necessarily know when they are entering Kill Devil Hills from either Kitty Hawk or Nags Head, both of which have less stringent dog regulations than Kill Devil Hills.

She stated that she felt the existing ordinance to be onerous and confusing to visitors who come here unaware of the regulations.

Ms. Armistead also relayed how much her own dog enjoys the beach and ocean, and how much his antics are enjoyed by others on the beach. Dogs, she felt, offer an opportunity for people to engage one another.

Ms. Armistead also supported her comments by citing a legislative study conducted in California, which found no detrimental health-related issues on dog-friendly beaches, found them to be extremely clean, and generally found pet-friendly beaches to be of a higher quality than those that do not allow dogs on the public beach. The study also provided positive benefits on dog-friendly beaches.

She acknowledged that there would likely still be problems with those wanting to somehow abuse regulations, even if they were relaxed. To combat that type of activity, Ms. Armistead suggested education and fines be used instead of banning dogs from the beach. She promised to help spread the word if new regulations were adopted. She also pointed out that the hours dogs are currently allowed on the beach are generally recognized as “shark-feeding time.”

Ms. Armistead concluded by asking the Board to change the regulations so that all people might enjoy time at the beach with their dogs. Ms. Armistead gave a petition with over 100 signatures to the Town Clerk for entry into the record of this meeting. Her written statement and a copy of the study she made reference to were also provided to the Town Clerk and each has been included in the record of this meeting.

**Skip Jones, 1508 Captain’s Lane Kill Devil Hills:** Mr. Jones felt the Town’s regulations to be a bit unfair and pointed out that Nags Head and Kitty Hawk must not be having many problems or they would change their own regulations. Mr. Jones added his support and agreement to Ms. Armistead’s comments.

**Barry Nasch, 1605 Wood Duck Lane, Kill Devil Hills:** Also expressed agreement with Ms. Armistead. Mr. Nasch explained he and his dog had been on the beach at the Eighth Street access and had been approached while on the beach with his dog by a Kill Devil Hills Ocean Rescue Supervisor; he thought he was in Nags Head, but was told by the guard that he could receive a citation in Kill Devil Hills for violating the Town Code. It was an uncomfortable situation, Ms. Nasch stated, and one that he felt unnecessary as the dog was well-behaved and on a leash, not hurting anything or anybody.

Addressing Mr. Nasch's comments, Mayor Davies explained that the Town's staff enforces the ordinances that are in effect in the Town of Kill Devil Hills. Disagreeing with an ordinance does not come into consideration when it must be enforced.

She continued that she and Ms. Armistead met about six months ago on the beach. Ms. Armistead asked for the Board of Commissioners to reconsider the issue of dogs on the beach. At that time, Mayor Davies explained to Ms. Armistead that she felt that the members of the Board were dog- and pet-friendly and would be willing to consider the possibility of changing the times of the restrictions. That prompted the spring/summer 2016 discussions on dogs on the beach. When the matter was scheduled for a public meeting the overwhelming response was for the regulations to remain the same and that the times not be changed. Commissioner Rheubottom added that the responses were not only from people attending the meeting but also many e-mails and telephone calls directed to the Board of Commissioners.

At this point, Ms. Armistead asked the Board to consider lessening the five-month ban by keeping the regulations in place from, perhaps, the middle of June until Labor Day. That time frame could be implemented and studied to see how it worked, and then potentially completely implemented. She felt this change could be a smart business move for the Town and she pointed out how much public attitude about dogs has changed and relaxed over the years.

Mayor Davies called for Board comment. Commissioner Hogan explained that he had not been in favor of changing the times dogs are allowed on the beach, and still does not support a change. He would not want the times changes to coincide with times that ocean rescue guards are on the beach as people could then believe that the rescue staff are responsible for enforcing dog regulations, which is not the case. Ocean rescue guards cannot be taken away from their primary duty to watch the water and those that are enjoying it. Commissioner Hogan concluded by pointing out that the comments the Board has received were nearly 2-1 against changing the Town's regulations.

Commissioner Midgette said he would be fine with relaxing the Town's standards and Commissioner Rheubottom said she thought that could be a good compromise. She pointed out that she would prefer to make only one change as education and implementation causes expense to the Town. Reducing the time dogs are prohibited on the beach to the three months between Memorial Day and Labor Day would be a significant change.

Commissioner Rheubottom added that when she and Mayor Davies first spoke on the issue, they both thought it would be an easy matter to consider and change; however, the response against making the change was so strongly overwhelming that she had to rethink the entire matter.

Speaking from the floor, Mr. Jones suggested that after beach nourishment people could be more spread out on the beach. He added that he thought many of the respondents against changing the regulations were oceanfront property owners who objected to dogs on the beach in front of their properties.

Commissioner Appleman explained that his family has four dogs and while his are not of a nature to enjoy the ocean and beach, he would be in support of changing the regulations.

Ms. Armistead added that educating the public that dogs being allowed on the beach is a privilege that could be taken away and not a right could be effective and the power of peer

pressure is very effective. She confirmed that she would certainly do her part to make sure people obey the regulations.

Mayor Davies recapped the Board's discussions and Staff was directed to provide the Board with three options to consider at the December 12<sup>th</sup> meeting:

- Lift the ban;
- A middle ground;
- Make no change.

Commissioner Hogan clarified that the ocean rescue guards are not charged with enforcing dog regulations, or any other beach regulations.

The Town Manager agreed with Mayor Davies that the sooner this matter is resolved the more time the Town will have to make the necessary changes on beach signs and publications so that any new regulations are adequately disseminated to the public.

## **B. Any other topic**

### **Skip Jones, 1508 Captain's Lane, Kill Devil Hills, Community Appearance**

**Commission member:** Mr. Jones encouraged anyone who has ideas about Town appearance to let the CAC know. Ideas welcome!!!

Commissioner Hogan added encouragement for anyone interested in serving in an appointed position on Town boards or committees to complete an application that can be considered by the Board of Commissioners. Anyone in the Town's Administration Department can be of assistance.

## **Adjourn**

There being no further business before the Board of Commissioners at this time, Commissioner Rheubottom made a motion to adjourn this meeting. Commissioner Appleman seconded that motion and approval was unanimous, 5-0.

It was 6:47 p.m.

STATE OF NORTH CAROLINA  
DARE COUNTY

SPONSORSHIP AGREEMENT FOR IN-KIND DONATION

This Sponsorship Agreement (this "Agreement") is entered into this the 15<sup>th</sup> day of November, 2016 by and between the Town of Kill Devil Hills, a political subdivision of the State of North Carolina (the "Town") and Hunt Riddle, individual or Advanced Tree Service Inc. organized and existing under the laws of the State of North Carolina.

RECITALS

WHEREAS, the Town is the owner of a parcel of property located at 1200 Veterans Drive  
Kill Devil Hills North Carolina that the Town intends to develop a disc golf course on said property; and

WHEREAS, the Town is interested in obtaining sponsors to help share the development cost and maintenance of the disc golf course; and

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Town agrees to construct the disc golf course on the property described above, in accord with plans developed and approved by the Town provided sufficient funds in the amount of \$51,150.00 or donation of in-kind services/materials to offset costs not covered by

monetary donations to cover all costs of construction are received by sponsorships on or by April 30, 2016. If sufficient funds or in-kind donations are not received or the Town elects not to proceed, the in-kind services will not be required or accepted.

2. The Sponsor agrees to donate to the Town in-kind services/materials as follows: having a retail value of \$ 15,000 for the right to sponsor the/a Parking Lot on/at the course for a period of twelve (12) years from the date of completion of said disc golf course. This agreement shall terminate in the event that the disc golf course is removed or ceases to exist for any reason.

3. The sponsored Parking Lot shall be designated as being sponsored by Advanced Tree Service Inc. on a sign/plaque prominently displayed at the location of the sponsored Parking Lot at the disc golf course.

4. The Town shall design and produce the sign/plaque acknowledging the sponsorship, the sign having dimensions to be determined by the town and maintain and sign/plaque during the term of this Agreement.

5. Nothing herein shall prevent the Town from seeking sponsors for other parts, facilities, or areas of the disc golf course.

6. All notices, consent or other communications required to be given pursuant to this Agreement shall be considered as properly given if made if delivered personally, or by mail or

overnight delivery service and addressed as follows:

To: Town of Kill Devil Hills                      Debora P. Diaz, Town Manager  
To: Advanced Tree Service Inc.                      Sponsor: Hunt Riddle

Either party may change its address by giving notice to the other party in writing stating its new address.

7. Miscellaneous Provisions.

a. Survival of Provisions. The covenants, acknowledgements, representations, agreements, and obligations contained in this Agreement shall survive the consummation of the transactions contemplated by this Agreement.

b. Relationship. Neither party shall become the agent of the other party for any purpose and this Agreement shall not create a partnership or joint venture. Nothing herein shall be construed to give \_\_\_\_\_ Advanced Tree Service Inc. any control or responsibility over the events to be held at the disc golf course.

c. Construction of Agreement. Each party acknowledges that it has participated in the negotiation of this Agreement and no provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. The Town and \_\_\_\_\_ Advanced Tree Service Inc. \_\_\_\_\_ at all times had access to an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement, and have had the opportunity to review and analyze this Agreement for a sufficient period of time prior to the execution and delivery thereof, No representations or warranties have

been made by or on behalf of the Town or relied upon by Advanced Tree Service Inc. pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. This Agreement embodies the entire agreement and understanding among the parties relating to the subject matter hereof and supersede all prior proposals, negotiations, agreements and understandings relating to such subject matter.

d. Pronouns. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender shall include all other genders. The singular shall include the plural and vice versa.

e. Governing Law. This Agreement, its execution, interpretation and performance, shall be governed by and construed in accordance with the laws of the State of North Carolina. Any controversy or claim arising out of or in any way related to this Agreement or the relationship established by it, or the alleged breach thereof, whether at common law, in contract, in tort, or under statute, shall be governed by the laws of the State of North Carolina. Legal proceedings involving such controversy or claim may be instituted only in the state courts for Dare County, North Carolina or in the United States District Court for the Eastern District of North Carolina, and the Town and Advanced Tree Service Inc. hereby irrevocably consent to the jurisdiction of such courts over their persons and waive any defense based on improper or inconvenient venue or lack of personal jurisdiction, and waive any defense based upon improper or insufficient process or service or process.

f. Headings. The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof or thereof.

g. No Assignment. The rights and obligations of the parties hereunder may not be assigned, or transferred to any person or entity.

h. No Modifications. The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted.

i. Invalid Provision to Affect no Others. If, from any circumstances whatsoever, fulfillment of any provision of this Agreement or any transaction related thereto shall be held invalid, then such provision only shall be deemed invalid and the remainder of this Agreement shall remain operative and in full force and effect.

j. In-Kind Donations. The Town makes no representation or guarantee that any in-kind donation qualifies as a charitable donation and the responsibility for establishing the fair market value of the donation is solely the responsibility of the donor. For the purposes of establishing the sponsorship, the Town and sponsor shall agree upon a retail value for the services or materials provided, which may differ from fair market value established by sponsor for tax purposes.

k. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement under seal, as of the day and year first above written.

TOWN OF KILL DEVIL HILLS

By: Corn Nields

Its: \_\_\_\_\_

Date: 11/15/14

By: [Signature]

Its: Assistant Town Manager

Date: 11/15/14

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

[Signature] 11-15/14  
Finance Officer Date