INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT** dated as of _____, 2021 (the *"Interlocal Agreement"*) among the **COUNTY OF DARE, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the *"County"*), the **TOWN OF DUCK, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina (*"Duck"*), the **TOWN OF KILL DEVIL HILLS, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina (the *"Kill Devil Hills"*), the **TOWN OF KITTY HAWK, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina (*"Kitty Hawk"*), and the **TOWN OF SOUTHERN SHORES, NORTH CAROLINA**, a municipal corporation organized under the laws of the State of North Carolina (*"Southern Shores"* and collectively with Duck, Kill Devil Hills and Kitty Hawk, the *"Towns"*);

WITNESSETH

WHEREAS, the Towns have each determined to undertake a beach nourishment project within its Town in 2022 or 2023 as they are authorized to do under North Carolina law;

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

WHEREAS, the Towns 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 Protection Engineering of North Carolina.

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

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

"Southern Shores Project" means the portion of the Projects within the Town limits of Southern Shores.

"Town Representatives" means the duly authorized representative of each 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 Towns 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 Contracts for all of the Projects. The Projects are comprised of four parts, the Duck Project, the Kill Devil Hills Project, the Kitty Hawk Project and the Southern Shores Project. The Dredge and Construction Contract will set forth separately the plan, design and cost of the Duck Project, the Kill Devil Hills Project, the Kitty Hawk Project and the Southern Shore Project; or, if the Dredge and Construction Contract does not separate the costs associated with each Project, the Project Manager will do so based on its best professional

judgment. Duck will be solely responsible for the administration of the Duck Project. Kill Devil Hills will be solely responsible for the administration of the Kill Devil Hills Project. Kitty Hawk will be solely responsible for the administration of the Kitty Hawk Project. Southern Shores will be solely responsible for the administration of the Southern Shores Project. Each 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 Towns and the County on the Projects as required by the Project Management Contract.

Section 3.2. ***Project Modifications.*** Each 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"***). Each 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 Towns 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 Towns 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 each Town for approval. Once approved by the applicable Town, unless payment is to be made to the Project Manager, the Project Manager will submit the invoice on behalf of each of the Towns 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 County and the Towns will contribute the following amounts to the cost of the Projects:

Duck Project

Duck Contribution	$ 5,159,523
County Contribution	796,572
NCDWR Grant	1,450,921
Total Project Cost	$ 7,407,016

Kill Devil Hills Project

Kill Devil Hills Contribution	$ 4,318,648
County Contribution	691,137
NCDWR Grant	1,450,921
Total Project Cost	$ 6,460,706

Kitty Hawk Project

Kitty Hawk Contribution	$ 5,387,682
County Contribution	2,854,815
NCDWR Grant	1,408,247
Total Project Cost	$ 9,650,744

Southern Shores Project

Southern Shores Contribution	$ 5,690,454
County Contribution	4,371,401
NCDWR Grant	1,408,247
Total Project Cost	$ 11,470,102

Note: Amounts listed above assume that Duck and Kitty Hawk increase their cubic yardages. If they do, the mobilization allocation must be recalculated (since it is done on cubic yards of each project). If they do not, the amounts shown will be adjusted back to the bid amounts.

The County will pay its share of the Projects as set forth above from a limited obligation bond financing. Each Town will pay its share of the Projects as set forth above from a special obligation bond financing procured separately by each Town. Duck and Kill Devil Hills will each have two separate special obligation bond financings, one supported by Town funds and the other supported by FEMA reimbursements. The Duck and Kill Devil Hills contributions set forth above reflect amounts from both sources for their respective projects. Each Town will be assisted in its financings by Parker Poe Adams & Bernstein LLP, as bond counsel, and by DEC Associates Inc., as financial advisor. The Towns and the County will cooperate in seeking the approval of the North Carolina Local Government Commission for

the financings. Each Town will have received all required approvals and will close its financing 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. Upon the closing of the financings described in Section 4.1, each Town and the County will deposit the amount described in Section 4.1 as its contribution to its Project. Once each Town has deposited its funds into the Construction Fund, all costs of the Contracts will first be paid from and allocated to the bond proceeds (including investment earnings on the bond proceeds) deposited in the Construction Fund until depleted, then from the County funds. It is the intent of the parties hereto that each of the Towns 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.

Funds will be requisitioned from the Construction Fund as set forth in Article III. If funds in the Construction Fund are insufficient to complete a particular Project, the applicable Town 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 for each as set forth in Section 4.1, then the excess funds (up to the applicable County contribution) will be retained by the County in the Beach Nourishment Fund with any additional excess refunded to the applicable Town.

Section 4.3. ***County Contributions to the Towns to be used for Debt Service.*** The County will transfer to Southern Shores the amounts and in the years as follows to be used towards the payment of debt service of its special obligation bonds issued to finance the Southern Shores Project:

Fiscal Year ending June 30	Amount
2023	$52,017
2024	23,565

The County will transfer to Kitty Hawk the amounts and in the years as follows to be used towards the payment of debt service of its special obligation bonds issued to finance the Kitty Hawk Project:

Fiscal Year ending June 30	Amount
2023	$ 256,545
2024	221,346
2025	186,148
2026	150,950
2027	115,752

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 Towns 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 Towns 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 Towns 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.

ARTICLE VI

LIABILITIES AND INDEMNIFICATION

Any liabilities arising from the Duck Project will be the sole responsibility of Duck. Any liabilities arising from the Kill Devil Hills Project will be the sole responsibility of Kill Devil Hills. Any liabilities arising from the Kitty Hawk Project will be the sole responsibility of Kitty Hawk. Any liabilities arising from the Southern Shores Project will be the sole responsibility of Southern Shores. Any liabilities arising from the Dredge and Construction Contract or the Projects as a whole will be the responsibility of each of the Towns in proportion to the cost of its particular portion of the Projects, as shown in Section 4.1.

The Towns, in the same manner as set forth in the paragraph above with respect to their 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 Projects or the Contracts, or from injuries to person or property occurring from or related to the Projects 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 Towns recognize that the County is entering into this Interlocal Agreement for the purpose of assisting the Towns in the execution and administration of the Contracts in order to achieve savings in the costs of the Projects. The County will indemnify, protect and save the Towns 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 Towns 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 Towns, 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, mailed by certified mail, postage prepaid or by electronic mail with confirmation of receipt. The mailing and current email addresses are as follows:

County:	Attention County Manager PO Box 1000 Manteo, NC 27954 outten@darenc.com
Duck:	Attention Town Manager PO Box 8369 Duck, NC 27949 dhavens@townofduck.com

Kill Devil Hills:	Attention Town Manager PO Box 1719 Kill Devil Hills, NC 27948 debbie@kdhnc.com
Kitty Hawk:	Attention Town Manager PO Box 549 Kitty Hawk, NC 27949 andy.stewart@kittyhawktown.net
Southern Shores:	Attention Town Manager 5375 N. Virginia Dare Trail Southern Shores, NC 27949 cogburn@southernshores-nc.gov

ARTICLE IX

MISCELLANEOUS

Section 9.1. ***Amendment.*** This Interlocal Agreement may be amended through a supplement approved in writing by the County, Duck, Kill Devil Hills, Kitty Hawk and Southern Shores.

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 Agreement may be executed in any number of counterparts, by manual, facsimile, digital, electronic or .pdf file signatures, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. An executed copy of this Agreement delivered by facsimile, email, or other electronic means will be deemed to have the same legal effect as delivery of a manual signed copy of this Agreement. This Agreement and related documents may be sent and stored by electronic means.

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

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 Towns by the Project Manager, (b) the balance in the Construction Fund is zero, and (c) all duties and responsibilities of the County and Towns 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 Towns 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 applicable Town.

IN WITNESS WHEREOF, the Chairman of the Board of Commissioners of the County, the Mayor of Duck, the Mayor of Kill Devil Hills, the Mayor of Kitty Hawk 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, 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

[SIGNATURE PAGE TO 2021 INTERLOCAL AGREEMENT
AMONG THE COUNTY OF DARE, **TOWN OF DUCK,**
TOWN OF KILL DEVIL HILLS, TOWN OF KITTY HAWK
AND TOWN OF SOUTHERN SHORES RELATED TO BEACH NOURISHMENT PROJECTS]

TOWN OF DUCK, NORTH CAROLINA

[SEAL]

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 Duck, North Carolina

[COUNTERPART SIGNATURE PAGE TO 2021 INTERLOCAL AGREEMENT
AMONG THE COUNTY OF DARE, TOWN OF DUCK,
TOWN OF KILL DEVIL HILLS, TOWN OF KITTY HAWK
AND TOWN OF SOUTHERN SHORES RELATED TO BEACH NOURISHMENT PROJECTS]

TOWN OF KILL DEVIL HILLS, NORTH CAROLINA

[SEAL]

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 Kill Devil Hills, North Carolina

[COUNTERPART SIGNATURE PAGE TO 2021 INTERLOCAL AGREEMENT
AMONG THE COUNTY OF DARE, TOWN OF DUCK,
TOWN OF KILL DEVIL HILLS, **TOWN OF KITTY HAWK**
AND TOWN OF SOUTHERN SHORES RELATED TO BEACH NOURISHMENT PROJECTS]

TOWN OF KITTY HAWK, NORTH CAROLINA

[SEAL]

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 Kitty Hawk, North Carolina

[COUNTERPART SIGNATURE PAGE TO 2021 INTERLOCAL AGREEMENT
AMONG THE COUNTY OF DARE, TOWN OF DUCK,
TOWN OF KILL DEVIL HILLS, TOWN OF KITTY HAWK
AND **TOWN OF SOUTHERN SHORES** RELATED TO BEACH NOURISHMENT PROJECTS]

TOWN OF SOUTHERN SHORES, NORTH CAROLINA

[SEAL]

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