

# DRAFT – FOR ILLUSTRATION ONLY

## FIRE PROTECTION CONTRACT

This agreement dated this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between DUNN’S CORNERS FIRE DISTRICT, a quasi-municipal corporation chartered by the legislature of the State of Rhode Island and having a mailing address of One Langworthy Road, Westerly, Rhode Island 02891 (hereinafter referred to as “DUNN’S CORNER”) and the SHELTER HARBOR FIRE DISTRICT, a quasi-municipal corporation chartered by the legislature of the State of Rhode Island, and having a mailing address of 2 Schumann Road, Westerly, Rhode Island 02891 (hereinafter referred to as “SHELTER HARBOR”).

### RECITALS:

WHEREAS, DUNN’S CORNER is a quasi-municipal corporation chartered by the legislature of the State of Rhode Island and is authorized to provide fire protection to those areas of the Towns of Westerly and Charlestown as described in its charter as amended.

WHEREAS, SHELTER HARBOR is also a quasi-municipal corporation chartered by the legislature of the State of Rhode Island and authorized to provide fire protection to that area of the Town of Westerly described in its charter as amended.

WHEREAS, DUNN’S CORNER presently maintains an active firefighting department that provides is willing to provide fire protection services to SHELTER HARBOR on a fee basis.

WHEREAS, DUNN’S CORNER and SHELTER HARBOR each deems it desirable and in the public interest to enter into a written contract for fire protection services by DUNN’S CORNER in the incorporated area of SHELTER HARBOR upon the terms herein stated.

WHEREAS, By resolution of its Board of Governors duly adopted on April 25, 2009, SHELTER HARBOR is authorized to enter into this contract, subject to approval by a resolution duly adopted by the voters of SHELTER HARBOR at their annual meeting to be held August 8, 2009.

WHEREAS, DUNN’S CORNER is authorized to enter into this agreement by a resolution duly adopted on \_\_\_\_\_ by the voters of DUNN’S CORNER.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and for other valuable consideration SHELTER HARBOR hereby agrees and contracts with DUNN’S CORNER for adequate fire protection for real and personal property in the incorporated area of SHELTER HARBOR for the term and payment and other provisions herein expressed and DUNN’S CORNER agrees to furnish said fire protection for real and personal property in the incorporated area of SHELTER HARBOR for the term and payment and other provisions herein expressed.

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## FIRE PROTECTION CONTRACT PROVISIONS

1. DUNN'S CORNER will respond to any call for the extinguishment of a fire or other emergency situation occurring in or impacting the incorporated area of SHELTER HARBOR, including the use of other fire companies for backup support, unless DUNN'S CORNER is unable to respond to such call because of events constituting a force-majeure or other emergency to which it has previously responded. It is the intent of the parties hereto that DUNN'S CORNER shall respond to the same situations and render the same services to SHELTER HARBOR that it currently provides to the property owners of DUNN'S CORNER during the term of this agreement.
2. DUNN'S CORNER agrees to maintain adequate and sufficient equipment and facilities, and provide adequate personnel and training, and maintain adequate and sufficient protocols with other fire companies for backup support, in all cases sufficient to provide adequate fire protection service to DUNN'S CORNER, SHELTER HARBOR and any other fire district or entity with which it contracts to provide fire protection services.
3. It is further understood and agreed that for and in consideration of the monies paid by SHELTER HARBOR pursuant to this contract DUNN'S CORNER shall defend, indemnify and hold harmless SHELTER HARBOR for any and all liability, causes of action and damages, loss or expense incurred by SHELTER HARBOR arising out of DUNN'S CORNER operations including any loss or damage to or expenses incurred in the operation of fire apparatus or other equipment belonging to DUNN'S CORNER and the cost of any materials used in connection with any call for assistance unless said liability, causes of action and damages, loss or expense was caused by the negligence or intentional acts of SHELTER HARBOR.
4. DUNN'S CORNER as owner of the equipment to be used in answering calls for assistance in SHELTER HARBOR, agrees that it will assume full responsibility for injuries to persons or property or deaths resulting from DUNN'S CORNER negligence in the operation of any such equipment while answering any such calls, and will obtain liability insurance therefore. DUNN'S CORNER shall provide SHELTER HARBOR with a Certificate of Insurance evidencing the existence of such insurance, which Certificate shall name SHELTER HARBOR as an additional insured. Such Certificate shall also provide for thirty (30) days prior written notice to SHELTER HARBOR of the cancellation or failure to renew such policy.
5. DUNN'S CORNER shall have the right to bill individual landowners and residents of SHELTER HARBOR for the cost billed to DUNN'S CORNER of contracted specialized services to a response site where DUNN'S CORNER does not have the specialized capability or equipment, such as hazardous materials incidents. Any such billing will be consistent with billings to individual landowners and residents of DUNN'S CORNER for similar contracted specialized services.
6. It is expressly understood and agreed that the number of firefighters and the nature of equipment dispatched in answer to calls, the manner of fighting fires, and other operations at the scene of a fire, accident or other incident to which DUNN'S CORNER is called, are matters within the judgment of the fire chief of DUNN'S CORNER or his designee who may be in

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charge at the time, and there shall be no liability upon SHELTER HARBOR for any mistake of judgment in connection therewith.

7. (a) DUNN'S CORNER shall provide to SHELTER HARBOR any and all such incident reporting information as DUNN'S CORNER may from time to time be required to provide to the State of Rhode Island. The information that shall be provided shall be in such form and shall contain such information as required by the State of Rhode Island.

(b) DUNN'S CORNER agrees that annually it shall file with SHELTER HARBOR an up-to-date list of all Officers of DUNN'S CORNER including all members of the Operating Committee.

8. It is hereby mutually covenanted and agreed that the relation of DUNN'S CORNER to the services to be performed by it under this contract shall be that of an independent contractor.

9. DUNN'S CORNER shall at all times comply with all applicable laws, statutes, codes, rules and regulations.

### **TERM AND PAYMENT SCHEDULE**

1. In consideration of the fire protection provided to SHELTER HARBOR during the term of this agreement, SHELTER HARBOR agrees to pay DUNN'S CORNER as provided herein.

2. The term of this agreement shall be for five (5) years commencing at the beginning of the DUNN'S CORNER fiscal year for 2009 – 2010 through and including the fiscal year 2013 – 2014. The fiscal year for DUNN'S CORNER is from June 1 to May 31st. DUNN'S CORNER agrees to provide the fire protection services hereunder beginning June 1, 2009 with the understanding that the obligations of SHELTER HARBOR are subject to approval by the voters of SHELTER HARBOR at its annual meeting in August 2009.

3. Payment by SHELTER HARBOR for fire protection services as provided herein shall be calculated as follows:

a. The fee assessed SHELTER HARBOR for the fiscal year 2008-2009 is forty-one thousand and 00/100 (\$41,000.00) dollars, which amount shall be the prior fiscal year's fee amount for calculating the fee of SHELTER HARBOR for the initial year of the contract 2009-2010.

b. DUNN'S CORNER adopted budget for the 2008-2009 fiscal year as adopted September 24, 2008 is \$635,502.65, which amount shall be the prior fiscal year's budget for calculating the percentage increase or decrease in the budget for the initial year of the contract 2009-2010.

c. The fee to be paid by SHELTER HARBOR in any fiscal year during the term of this agreement shall be the prior fiscal year's fee amount increased by a percentage equal to the sum of (i) three (3%) percent plus (ii) the percentage increase in the DUNN'S CORNER adopted budget for the fiscal year the fee is to be paid over the prior fiscal year's budget or minus the

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percentage decrease for the fiscal year the fee is to be paid over the prior fiscal year's budget, with a cap on any increase of seven (7%) percent. The following table is for illustration purposes:

DUNN'S CORNER	SHELTER HARBOR
Budget Change	Fee Change
-5%	-2%
-4%	-1%
-3%	0%
-2%	1%
-1%	2%
0%	3%
1%	4%
2%	5%
3%	6%
4%	7%
5%	7%
6%	7%

d. In the event that DUNN'S CORNER receives grants or other sources of income other than from taxpayer assessments those funds shall not be applied to the DUNN'S CORNER budget. Budget increases or decreases shall be determined solely by funds to be received by DUNN'S CORNER from tax assessments and fees.

4. Payment shall be made by SHELTER HARBOR to DUNN'S CORNER, in accordance with the above calculations, as follows:

October 31, 2009 - 50% of the amount of the fee for the first fiscal year  
January 31, 2010 - 50% of the amount of the fee for the first fiscal year  
October 31, 2010 - 50% of the amount of the fee for the second fiscal year  
January 31, 2011 - 50% of the amount of the fee for the second fiscal year  
October 31, 2011 - 50% of the amount of the fee for the third fiscal year  
January 31, 2012 - 50% of the amount of the fee for the third fiscal year  
October 31, 2012 - 50% of the amount of the fee for the fourth fiscal year  
January 31, 2013 - 50% of the amount of the fee for the fourth fiscal year  
October 31, 2013 - 50% of the amount of the fee for the fifth fiscal year  
January 31, 2014 - 50% of the amount of the fee for the fifth fiscal year

In the event any of the above payments are not received within thirty (30) days of the due date then said payment shall accrue interest at the rate of twelve (12%) percent per annum until said payment is paid in full.

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## **ADDITIONAL PROVISIONS**

1. DUNN'S CORNER has in the past supplied fire protection services to the Weekapaug Fire District. DUNN'S CORNER represents that those services are not currently provided to Weekapaug and Weekapaug has no payment obligation to DUNN'S CORNER. In the event that DUNN'S CORNER resumes fire protection services to Weekapaug Fire District for a fee DUNN'S CORNER agrees to renegotiate the fees paid by SHELTER HARBOR pursuant to this agreement.
2. The parties hereto agree that the DUNN'S CORNER fire chief shall be the authority having exclusive jurisdiction for any required permits or approvals relating to fire protection matters in SHELTER HARBOR during the term of this agreement.
3. The parties will use their best efforts to begin negotiations to extend or terminate this agreement no later than September 1, 2012 so as to reach agreement on any such termination or extension by April 1, 2013. This agreement shall be renewed automatically for one (1) year periods from the time of its first expiration, unless either party notifies the other in writing at least two hundred fifty (250) days prior to its termination date, or the termination date of any renewed period, of the party's decision not to renew it for an additional period for the annual fee as calculated herein or for such other annual fee as may be agreed on by the parties.

## **MISCELLANEOUS**

1. This Fire Protection Contract is executed by duly authorized individuals of the respective parties and only after all approvals or consents (if any) have been obtained, except that the payment obligations of SHELTER HARBOR in accordance with this agreement are subject to approval by the voters of SHELTER HARBOR at its August 2009 annual meeting.
2. DUNN'S CORNER is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement, or of its right, title or interest in this agreement, or its power to execute this agreement, to any other person or corporation without the previous consent in writing of SHELTER HARBOR.
3. DUNN'S CORNER and SHELTER HARBOR acknowledge that they are both subject to the provisions of the Open Meetings Law (Rhode Island General Laws Chapters 42-46) and the Freedom of Information Law.
4. This agreement shall be governed by the laws of the State of Rhode Island.
5. This agreement constitutes the complete understanding of the parties.
6. No modifications of any provisions of this agreement shall be valid unless in writing and signed by both parties.
7. No waiver of any breach of any provision of this agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other

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term or provision of this agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

8. It is understood and agreed by the parties that if any part, term, or provision of this contract is held by a court of competent jurisdiction to be illegal or in conflict with any laws of the State of Rhode Island or the United States of America the validity of the remaining portions or provisions shall not be affected. The parties shall negotiate in good faith to replace any invalid or illegal provision with a valid and legal provision, which, to the extent possible, will preserve the economic effect of the invalid or illegal provision.

9. Any Notices in writing required to be given to DUNN'S CORNER shall be hand-delivered or sent by regular mail, postage prepaid, to the following address:

One Langworthy Road  
Westerly, RI 02891

COPY TO:

Vincent J. Naccarato, Esquire  
NACCARATO & FRACASSA  
96 Franklin Street  
P.O. Box 2976  
Westerly RI 02891-0933

Any Notices in writing required to be given to SHELTER HARBOR shall be hand-delivered or sent by regular mail, postage prepaid, to the address of the then current Moderator of SHELTER HARBOR:

The current Moderator is:  
Gail Mallard  
2 Schumann Road  
Westerly, RI 02891

COPY TO:

Peter Ruggiero, Esquire  
Twenty Centerville Road  
Warwick, RI 02886

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In witness whereof the parties hereto have caused this agreement to be executed on their behalf by their duly authorized officers on the dates indicated below.

SHELTER HARBOR FIRE DISTRICT

by \_\_\_\_\_  
Gail Mallard  
Its Moderator

Date: \_\_\_\_\_

DUNN’S CORNER CORNERS FIRE DISTRICT

by \_\_\_\_\_  
John Merkel  
Its Moderator

Date: \_\_\_\_\_

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