

**DUNN'S CORNERS FIRE DISTRICT**

**AND**

**SHELTER HARBOR FIRE DISTRICT**

**FIRE PROTECTION CONTRACT**

This AGREEMENT, effective June 1, 2015 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, RI 02891 (hereinafter referred to as "DUNN'S CORNERS") and SHELTER HARBOR FIRE DISTRICT, a quasi-municipal corporation chartered by the legislature of the State of Rhode Island and having a mailing address of 48 Rossini Road, Westerly, RI 02891, (hereinafter referred to as "SHELTER HARBOR").

RECITALS:

WHEREAS, DUNN'S CORNERS is a quasi-municipal corporation chartered by the legislation of the State of Rhode Island and is authorized to provide the fire protection to areas of the Towns of Westerly and Charlestown, as described in its charter, as amended; and

WHEREAS, SHELTER HARBOR is also a quasi-municipal corporation chartered by the legislation of the State of Rhode Island and is authorized to provide fire protection to the area commonly known as the Village of Shelter Harbor in the Town of Westerly, as described in its charter as amended;

WHEREAS, DUNN'S CORNERS presently maintains an active firefighting department (the Dunns Corners Fire Department, a Rhode Island fire department corporation hereinafter referred to as "Fire Department") that is willing to provide fire protection services to SHELTER HARBOR on a fee basis; and

WHEREAS, DUNN'S CORNERS and SHELTER HARBOR each deem it desirable and in the general public interest to enter into a written contract for DUNN'S CORNERS to provide fire protection services to SHELTER HARBOR upon the terms herein stated; and

WHEREAS, By agreement effective the financial year of 2008-09 through financial year 2013-14 and extended through financial year 2014-15, DUNN'S CORNERS provided fire protection to SHELTER HARBOR and also has agreed to provide further fire protection to SHELTER HARBOR after that date.

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 CORNERS 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 CORNERS 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.

## ARTICLE I

### FIRE PROTECTION CONTRACT PROVISIONS

A. DUNN'S CORNERS will respond to any call for the extinguishment of a fire or other emergency situations occurring in or impacting the incorporated area of SHELTER HARBOR, including the use of other fire companies for backup support, unless DUNN'S CORNERS is unable to respond to such call because of (a) events constituting a force-majeure or, (b) another emergency to which it has previously responded and which requires use of all available resources. It is the intent of the parties hereto that DUNN'S CORNERS 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.

B. DUNN'S CORNERS agrees to maintain adequate and sufficient equipment and facilities, 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 SHELTER HARBOR and any other fire district or entity with which it contracts to provide fire protection services.

C. It is further understood and agreed that for and in consideration of the monies paid by SHELTER HARBOR pursuant to this contract, DUNN'S CORNERS shall defend, indemnify and hold SHELTER HARBOR harmless for any and all liability, causes of action, damages, loss and/or expense incurred by SHELTER HARBOR arising out of DUNN'S CORNERS operations in the Shelter Harbor Fire District, including any loss or damage to or expenses incurred in the operation of fire apparatus or other equipment belonging to DUNN'S CORNERS and the cost of any materials used in connection with any call for assistance thereto, unless said liability, causes of action and damages, loss or expense was caused by the negligence or intentional acts of SHELTER HARBOR.

D. DUNN'S CORNERS, as owner or lessee 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 CORNERS' negligence in the operation of any such equipment while answering any such calls and will obtain liability insurance therefore, DUNN'S CORNERS 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.

E. DUNN'S CORNERS shall have the right to bill individual landowners and residents of SHELTER HARBOR for the cost billed to DUNN'S CORNERS of contracted specialized services to a response site where DUNN'S CORNERS 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 CORNERS for similar contracted specialized services.

F. 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 CORNERS is called, are matters within the judgment of the fire chief of DUNN'S CORNERS, or his designee who may be in charge at the time, and there shall be no liability upon SHELTER HARBOR for any mistake of judgment in connection therewith.

G. (1) DUNN'S CORNERS shall provide to SHELTER HARBOR any and all such incident reporting information as DUNN'S CORNERS 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.

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

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

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

## **ARTICLE II**

### **TERM AND PAYMENT SCHEDULE**

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

B. The term of this agreement shall be from June 1, 2015 through May 31, 2021, during which period DUNN'S CORNERS agrees to provide the fire protection services described hereunder to SHELTER HARBOR beginning at 12:00 Midnight on June 1, 2015 and ending at 12:00 Midnight, May 31, 2021.

C. The annual monetary payment to be paid DUNN'S CORNERS by SHELTER HARBOR for fire protection services provided herein shall be the product of the total of the SHELTER HARBOR property tax assessment as of December 31<sup>st</sup> of the previous year (as determined by the Westerly Tax Assessor) multiplied by the mil rate determined by DUNN'S CORNERS, then said product to be reduced by the DUNN'S CORNERS administrative savings percentage (see below), which in 2015-16 shall be seven (7.0%) percent. This amount shall be the Annual Payment. During years 2015-16, 2016-17 and 2017-18, \$3,500.00 shall be deducted from each Annual Payment.

The DUNN'S CORNERS administrative savings percentage will be the total of the collection fee percentage up charge and the administrative fee discount percentage relating to accounting, tax collection and audits fees budgeted by DUNN'S CORNERS. Any collection fee percentage up charge can be calculated from the resolution approved by the DUNN'S

CORNERERS taxpayers covering total taxes to be collected at any Annual Meeting. The DUNN'S CORNERS administrative savings percentage can be calculated from any annual DUNN'S CORNERS budget. Budgeted tax collection related costs plus audit fees divided by the total budget amount. For example, for 2015-16, DUNN'S CORNERS agreed to use 4% as the administrative fee discount level. We also agreed on 3% for the collection up charge rate as that is what DCFD taxpayers approved for tax collections at the July 2015 annual meeting (0.428 less 7% (4 + 3) = 0.398).

D. Remittance of said Annual Payment shall be in two (2), equal installments, the first installment being due by December 1<sup>st</sup> and the final installment being due by February 1<sup>st</sup>, both payments timing **TO BE OF THE ESSENCE**.

E. Any and all fees, penalties and/or other monetary compensation stemming from inspections performed by the DUNN'S CORNERS Fire Chief, his qualified subordinates or other qualified DUNN'S CORNERS personnel shall be the fees, penalties and/or other monetary compensation of DUNN'S CORNERS and handled therein as it is in that fire district and shall not in any way act as any type of credit or other benefit to SHELTER HARBOR.

F. In the event that DUNN'S CORNERS receives grants or other sources of income other than from taxpayer assessments and fees or from contracting districts, such as SHELTER HARBOR, those grants and other sources of income will be applied to specific expense items. Such expense items will not be included in the DUNN'S CORNERS budget nor apply in any way to this agreement with SHELTER HARBOR.

### ARTICLE III

#### ADDITIONAL PROVISIONS

A. The parties hereto agree that the DUNN'S CORNERS 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.

B. Options: It is DUNN'S CORNERS intention to continue to provide fire protection to SHELTER HARBOR beyond the term of this Agreement and DUNN'S CORNERS and SHELTER HARBOR agree to meet by December 1, 2020 to discuss extending this Agreement. If no agreement is made by March 1, 2021, then this Agreement shall automatically extend for one (1) more year. If either party desires to not extend this Agreement, then written notice of such intent must be made 250 days prior to the end of the current term, or any extension thereof, of this Agreement.

### ARTICLE IV

#### MISCELLANEOUS

A. This Agreement is executed by duly authorized individuals of the respective parties and is legally binding only after all approvals or consents (if any) of the taxpayers of each party have been obtained.

B. DUNN'S CORNERS 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.

C. DUNN'S CORNERS 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.

D. This Agreement shall be governed by the laws of the State of Rhode Island.

E. This Agreement constitutes the complete understanding of the parties.

F. No modifications of any provisions of this Agreement shall be valid unless in writing and signed by both parties.

G. 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 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.

H. 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 of the 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.

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

Chief Michael Frink  
One Langworthy Road  
Westerly, RI 02891

COPY TO:

Atty Michael Cozzolino  
80 Beach Street  
Westerly, RI 02891

Any Notice 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.

Thomas M. Lloyd, Jr., Moderator  
88 Donizetti Road  
Westerly, RI 02891

COPY TO:

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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.

DUNN'S CORNERS FIRE DISTRICT

By: Michael Frink  
Michael Frink, Chief

By: Matthew H. Thomsen  
Matthew H. Thomsen, Moderator

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

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.

DUNN'S CORNERS FIRE DISTRICT

By: \_\_\_\_\_  
Michael Frink, Chief

By: \_\_\_\_\_  
Matthew H. Thomsen, Moderator

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

SHELTER HARBOR FIRE DISTRICT

By: \_\_\_\_\_  
Thomas M. Lloyd, Jr., Moderator

Date: JUNE 5, 2016