TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM March 13, 2023

TO: Mayor and Board of Commissioners

FROM: Debora P. Diáz, Town Manager

REF: New Business

1. Lease agreement for Kill Devil Hills Fire Station #14 / Dare County EMS Station #1 (Attached NB-1)

The Town of Kill Devil Hills has identified the need for the construction of a new fire station that is centrally located and better equipped to serve the long-term needs of our community. The Town and Dare County have partnered to develop and operate a joint KDH Fire / Dare EMS station at 1630 North Croatan Highway, the site of the former Mako Mike's Restaurant, property now owned by Dare County. Work is underway for the demolition of the existing structure. The facility site plan will be submitted to the Planning Board for review and subsequently, the Board of Commissioners.

As part of this process, the Town will to enter into a 20-year lease, in which Dare County will develop the lot and construct the entire facility, designating a portion of the building for the Fire Department's operations. At its March 6, 2023, meeting, the Dare County Board of Commissioners approved the lease.

Financing for the entirety of the station will be finalized once Dare County receives approval from the Local Government Commission, which is expected in April 2023. Dare County Manager Robert Outten will be present to address any questions.

Staff recommends approval of the lease as presented, and a motion is in order.

NORTH CAROLINA
DARE COUNTY

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered unto this the ___ day of _____, 2023, by and between **COUNTY OF DARE**, hereinafter referred to as the Lessor, and the **TOWN OF KILL DEVIL HILLS**, hereinafter referred to as Lessee:

WITNESSETH

The Lessor owns a parcel of land in the Town of Kill Devil Hills more particularly described below. The parties have agreed to operate a joint EMS and fire department facility upon the property described below, with Lessor operating the EMS station and Lessee operating the fire department. Each have agreed that Lessor will construct the joint facility and lease the fire department portion of the facility to KDH upon the terms of this lease.

Now therefore, and in consideration of the premises recited herein and the rents to be paid, Lessor demises and leases to the Lessee and the Lessee rents from the Lessor the demised premises on the following terms and conditions:

1. **LEASED PREMISES**: The portion of the property designated as the Kill Devil Hills Fire Department as shown on the site plan entitled_____ which is attached, together with the associated drive aisles, parking to be used in common with Lessor (KDH portion), upon the property located at _____, Kill Devil Hills, and described in that certain deed recorded in Book 2575, Page 224 of the Dare County Registry.

2. **USE OF PREMISES**: Lessor expects to finance the facilities with tax-exempt debt obligations. Lessee shall not violate any of Lessor's obligations on such debt, shall use the premises for fire department and Town of Kill Devil Hills uses only and shall not allow its use for any other purposes.

3. **LEASE TERM**: This lease shall commence upon the issuance the certificate occupancy for the facility to be constructed. Lessee shall have and hold the demised premises for an initial term of twenty (20) years which term shall automatically renew for three (3) additional ten year terms unless Lessee provides written notice 90 days in advance of the expiration of any term that it does not intend to renew this lease.

4. **RENT AMOUNT**: Lessee agrees to pay to the Lessor, without deductions or setoff, a sum equal to Lessor's cost of improvements (including interest costs and cost of debt issuance) for the KDH portion of the property, amortized over the initial 20-year term, together with other expenses (utilities, maintenance, and insurance) set forth below. The project architect shall apportion the costs of the KDH portion of the project on a percentage basis without including in the calculation the costs associated with the changes made by KDH in December 2022. The costs associated with the KDH changes shall be apportioned over the 20-year initial terms and added to the annual rent payment. The "cost of improvements" potion of the rental amount and the "costs associated with

"changes made by KDH" shall be paid in 40 semiannual payments to be paid on the 15th day of November and the 15th day of April beginning on the first November or April that occurs following the issuance of debt for the project by Lessor. The "cost of improvements" potion of the rental amount and the "costs associated with "changes made by KDH" shall end upon payment of the 40th payment. The "other expenses" portion of the rent shall be paid annually on the 1st day of October beginning the first October following the issuance of the occupancy permit.

5. **ALTERATIONS OR IMPROVEMENTS**: Lessee shall not be authorized to make alterations or improvements to premises without the consent of Lessor.

6. **UTILITIES:** All utilities including, water, electricity, gas, and sewer shall be connected in the name of Lessor and the costs there of apportioned between the parties based upon the square footage of the improvements used by each party. Lessee's share shall be paid in arrears annually on the first day of October each year for the preceding calendar year portion thereof.

7. **MAINTENANCE:** Lessor shall keep and maintain the premises and the structures thereon. The annual maintenance cost shall be prorated between the parties based upon the square footage of the building improvements used by each party. Lessee's share shall be paid in arrears annually on the first day of October each year for the preceding calendar year or portion thereof.

8. **INSURANCE AND INDEMNIFICATION:** To the extent authorized by law and without waiving any defenses, including but not limited to the defense of sovereign immunity, Lessee will indemnify Lessor and its agents, and save them harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon the portion of the demised premises in the occupancy or use by the Lessee, if caused by any act or omission of Lessee, its agents, contractors, employees, servants, lessees or concessionaires.

   Lessor shall insure the entire premises with replacement value coverage and carry liability insurance in an amount not less than $1 million per occurrence and $3 million in the aggregate. The annual insurance cost shall be prorated between the parties based upon the square footage of the building improvements used by each party. Lessee's share shall be paid in arrears annually on the first day of October each year for the preceding calendar year or portion thereof.

   Lessor and Lessee shall each insure its own contents in such amount as it deems appropriate.

9. **RIGHT TO INSPECT PREMISES**: After reasonable notice to Lessor or its agent shall have access to the demised premises for the purpose of examining and inspecting the condition of the same.

10. **CONDEMNATION**: If the whole of the demised premises shall be acquired or condemned by eminent domain for any public or quasi-public purpose or use, then the terms of this lease shall cease and terminate as of the date of title vesting in such proceeding and all sums paid as a part of the condemnation proceeding shall be paid to Lessor.

11. **RECONSTRUCTION**: If the premises shall be partially damaged by fire or other casualty during the term of this lease, or any extension thereof, Lessor at its option may reconstruct the premises without further consent of Lessee and Lessee shall continue to be bound by the terms of this lease. If Lessor notifies Lessee in writing of its election not to reconstruct, this lease shall terminate.

12. **ASSIGNMENT:** Neither party, without the written consent of the other, shall have the right to sublet the premises in whole or in part to any non-governmental agency or entity, it being the purpose of this lease to provide facilities for Dare EMS and for the fire department use of Lessee.

13. **LICENSES:** Lessee shall obtain in its name all licenses and permits necessary to construct the contemplated improvements and to operate its business.

14. **RECORDNG**: Lessee may record this lease without the written consent of the Lessor.

15. **BINDING NATURE**: The covenants and agreements herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, representatives, successors, grantees and assigns, of the parties hereto.

16. **SUBORDINATION**: The Lessor has executed and delivered a Deed of Trust, Security Agreement and Fixture Filing dated as of May 1, 2023, which may be amended from time to time (the "Deed of Trust"), for the benefit of Dare County Public Facilities Corporation that places a lien on the Leased Premises referred to in Section 1 to secure the Lessor's obligations under an Installment Financing Contract dated as of May 1, 2023, as may be amended from time to time (the "Installment Financing Contract") between the Lessor and the Corporation under which the Lessor has financed improvements on the Leased Premises. This lease is expressly subordinate to the Deed of Trust and any future deed of trust executed and delivered by the County for the purpose of refinancing its obligations under the installment financing contract referred.

17. **COMPLIANCE WITH INSTALLMENT FINANCING CONTRACT**: The Lessee understands that under the Contract and Deed of Trust the Lessor has undertaken certain responsibilities for the Leased Premises, including among other things for its care, use, operation, insurance, and made certain agreements related to the Leased Premises, including among other things related to circumstances upon the damage, destruction and condemnation of the Leased Premises. Notwithstanding anything else in this lease to the contrary, the Lessee agrees to fulfill the Lessor's responsibilities under the Contract and Deed of Trust related to the Leased Premises and that in the event of any conflict between the Contract or the Deed of Trust and this lease, the terms of the Contract and the Deed of Trust will control.

Entered the day and year first above written.

LESSOR:

County Dare

By:_____
Chairman or the Board of Commissioners

Attest:_____
Clerk to the Board

SEAL

LESSEE:

Town of Kill Devil Hills

By:_____
Mayor

Attest:_____
Clerk to the Board

SEAL

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STATE OF NORTH CAROLINA
COUNTY OF _____

I_____, a notary public for the aforesaid state and county certify that Ben Sproul came before me this day and acknowledged that he is the Mayor of the Town of Kill Devil Hills, a body politic, and by the authority duly given and as the act of the Kill Devil Hills Board of Commissioners, the forgoing instrument was duly signed in its name by himself as its Mayor, sealed with its corporate seal and attested by the Clerk to the Board.

Witness my hand and seal this the ___ day of _____, 2023.

SEAL _____ Notary Public

My commission expires:_____

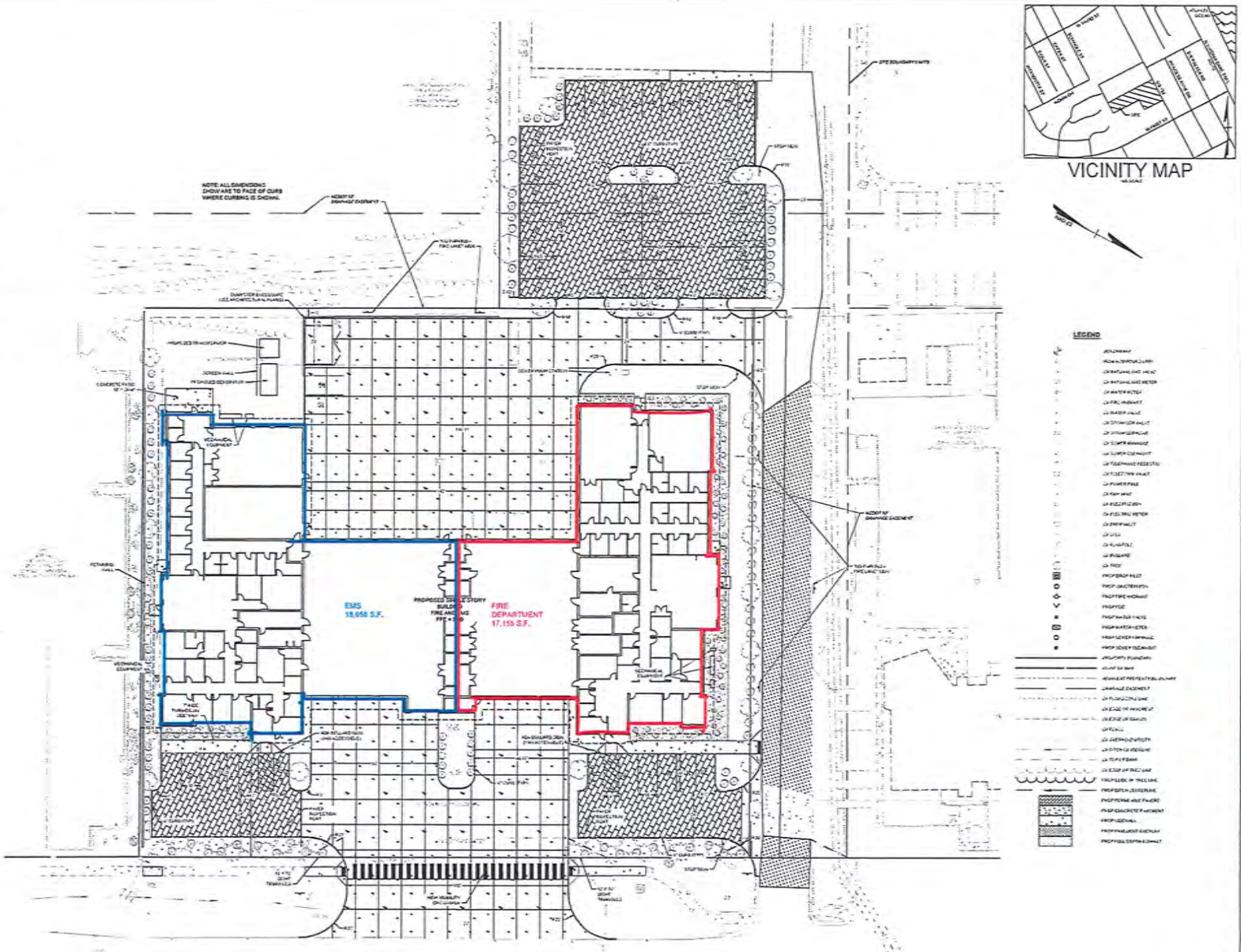
STATE OF NORTH CAROLINA
COUNTY OF DARE

I_____, a notary public for the aforesaid state and county certify that Robert L. Woodard, Sr. came before me this day and acknowledged that he is the Chairman of the Dare County Board of Commissioners, a body politic, and by the authority duly given and as the act of the Dare County Board of Commissioners, the forgoing instrument was duly signed in its name by himself as its Chairman, sealed with its corporate seal and attested by the Clerk to the Board.

Witness my hand and seal this the ___ day of _____, 2023.

SEAL _____ Notary Public

My commission expires:_____



VICINITY MAP

LEGEND

OAKLEY COLLIER ARCHITECTS

TIMMONS GROUP

NEW BUILDING FOR:
DARE COUNTY
EMS STATION 1/ FIRE STATION 14
1630 N CROATAN HWY
KILL DEVIL HILLS, NORTH CAROLINA

BID DRAWINGS NOT FOR CONSTRUCTION

GENERAL NOTE:
Prior to construction start, Contractor shall verify & be responsible for all Dimensions.

12/21/22	52044.001
BCD	C2.0
KDH	

SITE PLAN

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