

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD,  
NORTH CAROLINA PROVIDING FOR THE ISSUANCE OF A SPECIAL OBLIGATION BOND  
(FEMA GRANT PROJECT), SERIES 2019B**

**WHEREAS**, the Town of Nags Head, North Carolina (the “*Town*”) is authorized by Section 159I-30 of the General Statutes of North Carolina (the “*Applicable Statute*”) to issue its special obligation bonds for beach erosion control and flood and hurricane works provided in a municipal service district; and

**WHEREAS**, the Board of Commissioners of the Town (the “*Board*”) has created a Municipal Service District (the “*District*”), in accordance with Article 23 of Chapter 160A of the North Carolina General Statutes, in which the Town has determined to construct certain beach erosion control and flood and hurricane protection works (the “*Current Project*”); and

**WHEREAS**, there are two separate funding sources for the Current Project, with approximately 2.3 million cubic yards of sand for the Current Project ultimately being funded by the Town and Dare County (the “*Town Portion*”) and approximately 1.4 million cubic yards of sand for the Current Project ultimately being funded by a grant from the Federal Emergency Management Agency (the “*FEMA Portion*”);

**WHEREAS**, the Board on June 20, 2018 adopted a “Bond Order Authorizing the Issuance of Special Obligation Bonds of the Town of Nags Head, North Carolina (FEMA Grant Project)” (the “*FEMA Grant Project Bond Order*”) providing for the issuance of Special Obligations Bonds to be secured by the sources set forth in the FEMA Grant Project Bond Order; and

**WHEREAS**, the Board has determined that it is necessary and advisable at this time to issue the Town’s Special Obligation Bond (FEMA Grant Project), Series 2019B (the “*2019B Bond*”) in the aggregate principal amount of \$16,233,837.14 to (1) pay the costs of the FEMA Portion of the Current Project and (2) pay the costs of issuing the 2019B Bond; and

**WHEREAS**, PNC Bank, National Association (referred to herein as the “*Purchaser*”), has agreed to purchase the 2019B Bond as set forth in its Term Sheet, dated May 31, 2018 (the “*Term Sheet*”); and

**WHEREAS**, the Town has applied to the Local Government Commission of North Carolina (the “*Commission*”) for approval of its application relating to the 2019B Bond as required by Section 159I-30(i) of the Applicable Statute and of the issuance and private sale of the 2019B Bond, which approvals are expected to be granted at the Commission’s meeting on July 10, 2018 (the “*Commission Approval*”); and

**WHEREAS**, the Board now desires to provide for the terms, form and issuance of the 2019B Bond in the amount of \$16,233,837.14; and

**WHEREAS**, the Board has determined that the Town will issue the 2019B Bond on a forward-delivery basis on or about January 14, 2019 (the “*Funding Date*”) pursuant to a Forward Delivery Bond Purchase Agreement (2019B), to be dated its date of delivery on or about July 13, 2018, between the Commission and the Purchaser and approved the Town; and

**WHEREAS**, the Board desires to incorporate in this Resolution, to the extent applicable and unless manifestly inappropriate, the provisions of the FEMA Grant Project Bond Order, including definitions;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD, NORTH CAROLINA, IN ACCORDANCE WITH THE FINAL COMMISSION APPROVAL AS SET FORTH ABOVE AND ANY CONDITIONS, TERMS AND OTHER CONTINGENCIES THAT MAY BE SET FORTH THEREIN, AS FOLLOWS:**

**Section 1. Acceptance of Term Sheet, Issuance of Bond.** The Town hereby accepts and approves the Term Sheet offered by the Purchaser; provided, however, such Term Sheet shall not represent the final terms of the transaction, which shall be only this Resolution, the 2019B Bond and any closing documents. The Term Sheet is not incorporated herein. The Town shall issue in accordance with and pursuant to the Applicable Statute, the FEMA Grant Project Bond Order, and this Resolution, its 2019B Bond in the aggregate principal amount of \$16,233,837.14 for the purpose of providing funds, together with other available funds, to (1) pay the costs of the FEMA Portion of the Current Project and (2) pay the costs of issuing the 2019B Bond. The period of usefulness of the capital projects to be financed by the issuance of the 2019B Bond is not less than five years, computed from the date of the issuance of the 2019B Bond.

**Section 2. Form of Bond.** The 2019B Bond shall be issued in fully registered form. The 2019B Bond shall be issued as a single bond, shall be substantially in the form set forth in Exhibit A attached hereto and made a part hereof, with such appropriate variations, omissions and insertions as are permitted or required by this Resolution. The Finance Director is hereby appointed to be the registrar of the 2019B Bond (the “*Registrar*”) and is hereby directed to maintain the appropriate registration records with respect thereto.

**Section 3. Details of Bond.** (a) The 2019B Bond shall be dated the date of its issuance, shall bear interest at a fixed rate of 2.82% per annum until its payment and shall be stated to mature (subject to the right of prior redemption) on July 14, 2020 (the “*Maturity Date*”).

If at any time there is a Determination of Taxability or Event of Taxability, as such terms are hereinafter defined, the fixed rate of interest shall be increased to and be calculated at the rate which will provide to the Purchaser the effective yield which it would have received if there had not been a Determination of Taxability or an Event of Taxability, such rate to be determined by the Purchaser (the “*Alternative Rate of Interest*”), and shall be payable from the Date of Taxability to such time as the 2019B Bond is paid in full. In such event, the Town also shall be required to pay to the Purchaser all amounts, if any, which may be necessary to reimburse the Purchaser for any interest, penalties or other charges assessed by the Internal Revenue Service and the Department of Revenue of the State of North Carolina against the Purchaser by reason of the Purchaser’s failure to include the interest on the 2019B Bond in its gross income for income tax purposes. The Town shall pay to the Purchaser the above mentioned Alternative Rate of Interest notwithstanding any transfer by the Purchaser or payment or prepayment by the Town prior to the date such Determination of Taxability was made.

“*Event of Taxability*” shall mean any event, occurrence or situation, resulting from an action, or failure to act, by the Town, the effect of which is to cause the interest on the 2019B Bond to be includible in the gross income of the Purchaser for federal income tax purposes. A “*Determination of Taxability*” shall mean a determination that the interest on the 2019B Bond is included in gross income of the Purchaser for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date on which the Purchaser is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, as a consequence of an Event of Taxability, the interest on the 2019B Bond is included in the gross income of the Purchaser for federal income tax purposes; (b) the date on which the Town receives notice from the Purchaser that the Purchaser has been advised in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to the Purchaser which asserts, in effect, that interest on the 2019B Bond received by the Purchaser is included in the gross income of the Purchaser for federal

income tax purposes, as a result of an Event of Taxability; (c) the day on which the Town is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service that the interest on the 2019B Bond is included in the gross income of the Purchaser for federal income tax purposes as a result of an Event of Taxability; or (d) the day on which the Town is advised in writing by counsel to the Purchaser that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Town has been given written notice and an opportunity to participate and defend that interest on the 2019B Bond is included in the gross income of the Purchaser for federal income tax purposes, as a result of an Event of Taxability.

“*Date of Taxability*” shall mean the first date upon which interest on the 2019B Bond is included in the gross income of the Purchaser for federal income tax purposes as a result of an Event of Taxability or a Determination of Taxability.

(b) Principal on the 2019B Bond will be payable on the Maturity Date.

(c) From the Funding Date to the date that is six months after the Funding Date, the 2019B Bond shall be subject to optional redemption prior to its stated maturity at the option of the Town in whole (but not in part) on any date upon giving the Purchaser not less than 30 Business Days prior written notice thereof and as provided in this subsection (c). The redemption price of such 2019B Bond shall be equal to 100% of the principal amount of the 2019B Bond, plus interest accrued to the redemption date, plus, if so required by the Purchaser as compensation for the costs of the 2019B Bond being prepaid, an amount equal to the Cost of Prepayment. “*Cost of Prepayment*” means an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the applicable interest period, of a U.S. Treasury obligation with a maturity similar to the applicable interest period, minus (ii) the yield on the prepayment date, of a U.S. Treasury obligation with a maturity similar to the remaining maturity of the applicable interest period, and (b) the principal amount to be prepaid, and (c) the number of years, including fractional years, from the prepayment date to the end of the applicable interest period. The yield on any U.S. Treasury obligation shall be determined by reference to Federal Reserve Statistical Release H.15 (519) “*Selected Interest Rates.*” For purposes of making present value calculations, the yield to maturity of a similar maturity U.S. Treasury obligation on the prepayment date shall be deemed the discount rate. A “*Business Day*” shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial lenders are authorized or required to be closed for business in Raleigh, North Carolina.

The Purchaser shall provide the Town with a written statement explaining the calculation of the Cost of Prepayment due, if any, which statement shall, in absence of manifest error, be conclusive and binding on the Town.

(d) Beginning on the date that is six months after the Funding Date and each quarterly date thereafter (i.e. each three months), the 2019B Bond shall be subject to optional redemption prior to its stated maturity at the option of the Town in whole or in part from money in the Sinking Fund established under Section 5 without penalty. The Town will give the Purchaser not less than 10 Business Days prior written notice of its intention to make a prepayment under this subsection (d).

(e) Interest on the outstanding principal amount of the 2019B Bond shall be payable on July 14, 2019 and on each January 14 and July 14 thereafter until maturity. Interest on the 2019B Bond shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. In the event of a late payment, interest shall continue to accrue on the principal balance outstanding at the interest rate applicable to the 2019B Bond; provided that, if such payment is more than five days late, then interest shall accrue at the Default Rate as described in subsection (g) below.

(f) Principal of, premium, if any, and interest on the 2019B Bond shall be payable to the registered owner appearing on the registration records of the Registrar by wire transfer or by check, mailed to such registered owner at its address as it appears on such registration books and shall be received by the registered owner on the date such payment is due.

(g) If the Town defaults on its obligation to pay principal of and interest on the 2019B Bond, all amounts due on the 2019B Bond will bear interest at the Default Rate until the default is cured. The “*Default Rate*” shall be the greater of (i) 12% per annum or (ii) the Base Rate plus 3.00%; provided that in no event shall the Default Rate exceed 20% per annum or the maximum allowable legal interest rate. “*Base Rate*” means the greater of (i) the interest rate per annum announced from time to time by the Purchaser as its then prime rate, which rate may not be the lowest rate then being charged commercial borrowers by the Purchaser, or, (ii) the Federal Funds Open Rate plus 0.5% per annum. “*Federal Funds Open Rate*” means, for any day, the rate per annum determined by the Purchaser in accordance with its usual procedures (which determination shall be conclusive absent manifest error) to be the “*Open Rate*” for federal funds transactions as of the opening of business for federal funds transactions among members of the Federal Reserve System arranged by federal funds brokers on such day; provided, however, that if such day is not a Business Day, the Federal Funds Open Rate for such day shall be the Open Rate on the immediately preceding Business Day, or if no such rate shall be quoted by a federal funds broker at such time, such other rate as selected by the Purchaser in accordance with its usual procedures. Any rate of interest based on the Federal Funds Open Rate shall be adjusted as of each Business Day based on changes in the Federal Funds Open Rate without notice to the Town.

**Section 4. Security for the Bond.** The 2019B Bond shall be a special obligation of the Town and the principal of, prepayment premium and interest on the 2019B Bond shall be payable solely from the sources identified in the FEMA Grant Project Bond Order and as set forth in the 2019B Bond. The uses of the sources set forth in the FEMA Grant Project Bond Order and the 2019B Bond do not constitute a pledge of the Town’s taxing power and the Town is not obligated to pay the principal of, or interest or any premium on, the 2019B Bond except from the sources identified in the FEMA Grant Project Bond Order and the 2019B Bond.

**NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE TOWN ARE PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF, OR INTEREST OR ANY PREMIUM ON, THE 2019B BOND, AND NO OWNER OF THE 2019B BOND HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE TOWN IN CONNECTION WITH ANY DEFAULT THEREON.**

**Section 5. Application of the Bond Proceeds; Creation of Sinking Fund.** On or before the date of the initial issuance of the 2019B Bond, the Town will create an account with the Purchaser known as the “Nags Head FEMA Beach Nourishment Loan Fund” (the “*Loan Fund*”). On the date of the initial issuance of the 2019B Bond, the Purchaser shall deposit the 2019B Bond proceeds into the Loan Fund. The money in the Loan Fund will be invested, at the direction of the Town, in investments authorized by Section 159-30 of the General Statutes of North Carolina. Such 2019B Bond proceeds in the Loan Fund shall be applied solely as follows: (1) as soon as practicable, for the costs of the FEMA Portion of the Current Project, and (2) within 60 days of the date of initial issuance, for payment of the issuance costs. The Town must receive prior approval from the Purchaser for disbursements from the Loan Fund and the Purchaser will approve such disbursements on receipt, as applicable, of all the following: (1) a draft of the documents required by the North Carolina Emergency Management Fund from the FEMA Grant (as defined below) for the reimbursement of project expenses for which the disbursement is being made and (2) evidence of receipt from the North Carolina Emergency Management Fund for all disbursement requests more than 90 days old from the FEMA Grant.

On or before the date of the initial issuance of the 2019B Bond, the Town will create an account with the Purchaser known as the “Nags Head FEMA Beach Nourishment Sinking Fund” (the “*Sinking*

*Fund*”). The Town will cause to be deposited, and direct deposited to the extent practicable, in the Sinking Fund all money received from the State of North Carolina as reimbursement for costs of the FEMA Portion of the Current Project under a U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) Federal grant - FEMA-DR-4285-NC (Hurricane Matthew) (the “*FEMA Grant*”). The money in the Sinking Fund will be invested, at the direction of the Town, in investments authorized by Section 159-30 of the General Statutes of North Carolina. As long as the 2019B Bond is outstanding, the Town will use the money in the Sinking Fund solely for the purpose of prepaying the 2019B Bond in accordance with Sections 3(c) and 3(d) and paying the principal on the 2019B Bond on the Maturity Date. When the 2019B Bond is no longer outstanding, the Town may use the money in the Sinking Fund for any lawful purpose.

**Section 6. Execution of the Bond.** The 2019B Bond, issued as a single bond, shall be executed in the name of the Town by facsimile or manual signatures of the Town’s Mayor, the Town Manager or the Deputy Town Manager and Town Clerk or Deputy Town Clerk and the Certificate of Approval of the Commission shall bear a facsimile or manual signature of the Secretary of the Commission or his designated assistant. The Town Manager or the Finance Director shall manually authenticate the 2019B Bond.

**Section 7. Private Sale of Bond.** The Board requests that the Commission sell the 2019B Bond at private sale without advertisement to the Purchaser in the form of a single registered bond bearing interest at 2.82% per annum and containing such provisions as set forth above and in the Forward Delivery Bond Purchase Agreement (2019B), to be dated on or about July 13, 2018 (the “*BPA*”), between the Commission and the Purchaser and approved by the Town. The Town hereby approves the draft of the BPA presented at this meeting and hereby authorizes and directs the Mayor, the Town Manager, the Deputy Town Manager, the Finance Director and the Town Clerk, individually or collectively, as appropriate, to execute and deliver such BPA in such final form that they, with the advice of counsel, deem appropriate.

**Section 8. Authorization for Delivery of Bond.** The 2019B Bonds are being authorized to be issued on a forward delivery basis and are expected to be issued on or about January 14, 2019 in accordance with the BPA. The Mayor, the Town Manager, the Deputy Town Manager, the Finance Director and the Town Clerk, individually or collectively, are hereby authorized and directed to cause the 2019B Bond to be prepared and, when it shall have been duly sold by the Commission, to execute and authenticate the 2019B Bond and deliver the same to the Purchaser.

**Section 9. Arbitrage and Tax Covenants.** The Town covenants that it will not take or permit, or omit to take or cause to be taken, any action that would adversely affect the exclusion from gross income of the recipient thereof for federal income tax purposes of interest on the 2019B Bond and, if it should take or permit, or omit to take or cause to be taken, any such action, the Town will take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof. The Town acknowledges that the continued exclusion of the 2019B Bond from the owner’s gross income for federal income tax purposes depends, in part, on compliance with the arbitrage limitations imposed by Section 148 of the Code.

The Town covenants that it will comply with all the requirements of Section 148 of the Code, including the rebate requirements, and that it will not permit at any time any of the proceeds of the 2019B Bond or other funds under its control to be used, directly or indirectly, to acquire any asset or obligation, the acquisition of which would cause the 2019B Bond to be “*arbitrage bonds*” for purposes of Section 148 of the Code. The Town covenants that it will comply with the investment instructions in the Arbitrage and Tax Regulatory Certificate executed and delivered on the date hereof with respect to the 2019B Bond.

**Section 10. Authorization for Other Acts.** The Mayor, the Town Manager, the Deputy Town Manager, the Finance Director and the Town Clerk, individually or collectively, are further authorized and directed to take such action and to execute and deliver any such documents, deeds, certificates, undertakings, agreements or other instruments as they, with the advice of counsel, may deem necessary and appropriate to effect the transactions contemplated by the FEMA Grant Project Bond Order and this Resolution. Such officers are hereby directed to take all actions necessary to effectuate the transaction set forth above, including taking any such actions or making any such changes as may be required by the Commission Approval, and for the on-going administration of the FEMA Grant Project Bond Order, this Resolution and the 2019B Bond.

**Section 11. Transfer Restrictions.** Notwithstanding any other provisions of the FEMA Grant Project Bond Order or this Resolution to the contrary, the 2019B Bond shall not be transferred to any person other than a bank, insurance company or similar financial institution unless such transfer has been previously approved by the Commission.

The Purchaser or its assignees may assign or reassign all or any part of the 2019B Bond, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in the 2019B Bond, or making the 2019B Bond part of a pool of obligations without the consent of the Commission, so long as such assignment or reassignment is to (i) a bank, insurance company or similar institution or any other entity approved by the Commission; or (ii) a trustee for the purpose of issuing certificates of participation or other forms of certificates evidencing an undivided interest in the 2019B Bond, provided such certificates are sold only to a bank, insurance company or similar financial institution or other entity approved by the Commission.

Any reference to the Purchaser in this Resolution will include its successors or assigns made in accordance herewith.

The provisions of this paragraph may not be amended without the prior written consent of the Commission.

**Section 12. Reporting Requirements for the Town.** The Town hereby covenants to provide to the Purchaser at the same time the Town provides its annual audited financial statements to the Commission, but in no event later than 210 days after the end of the Town's fiscal year, the Town's annual audited financial statements. The Town shall also provide such other financial information and operating reports as may be reasonably requested by the Purchaser.

**Section 13. Supplemental Resolutions; Additional Parity Indebtedness.** The Town may adopt resolutions supplemental hereto; provided, however, the Purchaser's prior written consent shall be required for any supplemental resolution that affects the terms or tax treatment of the 2019B Bond. The Town may not issue indebtedness that is on parity with the 2019B Bond.

**Section 14. Governing Law.** This Resolution and the 2019B Bond are governed by and to be construed in accordance with the laws of the State of North Carolina.

**Section 15. Repealer.** All orders and resolutions and parts of orders and resolutions in conflict with this Resolution, if any, excluding the FEMA Grant Project Bond Order, shall be and the same are hereby repealed to the extent the conflict exists.

**Section 16. Effectiveness of Resolution.** This resolution shall be effective immediately upon its adoption by the Board.

STATE OF NORTH CAROLINA            )  
  )  
COUNTY OF DARE                    )        SS:

I, *Carolyn Morris*, Town Clerk of the Town of Nags Head, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PROVIDING FOR THE ISSUANCE OF A SPECIAL OBLIGATION BOND (FEMA GRANT PROJECT), SERIES 2019B**” adopted by the Board of Commissioners of the Town of Nags Head, North Carolina, at a meeting held on the 20<sup>th</sup> day of June, 2018.

**WITNESS** my hand and the corporate seal of the Town of Nags Head, North Carolina, this the \_\_\_\_ day of June, 2018.

[Seal]

\_\_\_\_\_  
Carolyn F. Morris  
Town Clerk  
Town of Nags Head, North Carolina

APPENDIX A

FORM OF 2019B BOND

**This Bond is subject to certain transfer restrictions as described herein.**

No. RB-1

\$16,233,837.14

UNITED STATES OF AMERICA  
STATE OF NORTH CAROLINA  
TOWN OF NAGS HEAD, NORTH CAROLINA

**SPECIAL OBLIGATION BOND (FEMA GRANT PROJECT), SERIES 2019B**

| <u>INTEREST RATE</u> | <u>MATURITY DATE</u> | <u>DATED DATE</u> |
|----------------------|----------------------|-------------------|
| 2.82%                | July 14, 2020        | January 14, 2019  |

**REGISTERED OWNER:** PNC BANK, NATIONAL ASSOCIATION

**PRINCIPAL SUM:** SIXTEEN MILLION TWO HUNDRED THIRTY-THREE THOUSAND EIGHT HUNDRED THIRTY-SEVEN AND 14/100 DOLLARS

**SPECIAL OBLIGATION BOND (FEMA GRANT PROJECT), SERIES 2019B**

*THE TOWN OF NAGS HEAD, NORTH CAROLINA* (the “Town”) acknowledges itself indebted and for value received hereby promises to pay to the Registered Owner named above, on the Maturity Date specified above, on surrender hereof, the Principal Sum shown above and to pay to the Registered Owner hereof interest thereon from the date of this Bond until it shall mature at the Interest Rate per annum specified above, payable on July 14, 2019 and on each January 14 and July 14 thereafter until the Maturity Date. Interest on this Bond shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. In the event of a late payment, interest shall continue to accrue on the principal balance outstanding at the interest rate per annum set forth above; provided that, if such payment is more than five days late, then interest shall accrue at the Default Rate described below until the default is cured. Principal of and interest on this Bond are payable in immediately available funds to the Registered Owner.

The Default Rate shall be the greater of (i) 12% per annum or (ii) the Base Rate plus 3.00%; provided that in no event shall the Default Rate exceed 20% per annum or the maximum allowable legal interest rate. “Base Rate” means the greater of (A) the interest rate per annum announced from time to time by the Purchaser as its then prime rate, which rate may not be the lowest rate then being charged commercial borrowers by the Purchaser, or, (B) the Federal Funds Open Rate plus 0.5% per annum. “Federal Funds Open Rate” means, for any day, the rate per annum determined by the Purchaser in accordance with its usual procedures (which determination shall be conclusive absent manifest error) to be the “Open Rate” for federal funds transactions as of the opening of business for federal funds transactions among members of the Federal Reserve System arranged by federal funds brokers on such day; provided, however, that if such day is not a Business Day, the Federal Funds Open Rate for such day shall be the Open Rate on the immediately preceding Business Day, or if no such rate shall be quoted by a



federal funds broker at such time, such other rate as selected by the Purchaser in accordance with its usual procedures. Any rate of interest based on the Federal Funds Open Rate shall be adjusted as of each Business Day based on changes in the Federal Funds Open Rate without notice to the Town.

This Bond is issued in accordance with the Registered Public Obligations Act, Chapter 159E of the General Statutes of North Carolina, and pursuant to the Section 159I-30 of the General Statutes of North Carolina, a “Bond Order Authorizing the Issuance of Special Obligation Bonds of the Town of Nags Head, North Carolina (FEMA Grant Project)” (the “*Bond Order*”) adopted by the Board of Commissioners of the Town (the “*Board*”) on June 20, 2018 and effective on the date of its adoption and an issuance resolution (the “*Issuance Resolution*”) adopted by the Board on June 20, 2018 and effective on the date of its adoption. This Bond is being issued to provide funds to construct certain beach erosion control and flood and hurricane protection works in the District (as defined in the Issuance Resolution) and to pay issuance costs relating to this Bond.

If at any time there is a Determination of Taxability or Event of Taxability, as such terms are hereinafter defined, the fixed rate of interest shall be increased to and be calculated at the rate which will provide to the Purchaser the effective yield which it would have received if there had not been a Determination of Taxability or an Event of Taxability, such rate to be determined by the Purchaser (the “*Alternative Rate of Interest*”), and shall be payable from the Date of Taxability to such time as this Bond is paid in full. In such event, the Town also shall be required to pay to the Purchaser all amounts, if any, which may be necessary to reimburse the Purchaser for any interest, penalties or other charges assessed by the Internal Revenue Service and the Department of Revenue of the State of North Carolina against the Purchaser by reason of the Purchaser’s failure to include the interest on this Bond in its gross income for income tax purposes. The Town shall pay to the Purchaser the above mentioned Alternative Rate of Interest notwithstanding any transfer by the Purchaser or payment or prepayment by the Town prior to the date such Determination of Taxability was made.

“*Event of Taxability*” shall mean any event, occurrence or situation, resulting from an action, or failure to act, by the Town, the effect of which is to cause the interest on this Bond to be includible in the gross income of the Purchaser for federal income tax purposes. A Determination of Taxability shall mean a determination that the interest on this Bond is included in gross income of the Purchaser for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date on which the Purchaser is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, as a consequence of an Event of Taxability, the interest on this Bond is included in the gross income of the Purchaser for federal income tax purposes; (b) the date on which the Town receives notice from the Purchaser that the Purchaser has been advised in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to the Purchaser which asserts, in effect, that interest on this Bond received by the Purchaser is included in the gross income of the Purchaser for federal income tax purposes, as a result of an Event of Taxability; (c) the day on which the Town is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service that the interest on this Bond is included in the gross income of the Purchaser for federal income tax purposes as a result of an Event of Taxability; or (d) the day on which the Town is advised in writing by counsel to the Purchaser that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Town has been given written notice and an opportunity to participate and defend that interest on this Bond is included in the gross income of the Purchaser for federal income tax purposes, as a result of an Event of Taxability.

“*Date of Taxability*” shall mean the first date upon which interest on this Bond is included in the gross income of the Purchaser for federal income tax purposes as a result of an Event of Taxability or a

## Determination of Taxability.

From the Dated Date of this 2019B Bond to the date that is six months after the Dated Date of this 2019B Bond, the 2019B Bond shall be subject to optional redemption prior to its stated maturity at the option of the Town in whole (but not in part) on any date upon giving the Purchaser not less than 30 Business Days prior written notice thereof and as provided in this paragraph. The redemption price of such 2019B Bond shall be equal to 100% of the principal amount of the 2019B Bond, plus interest accrued to the redemption date, plus, if so required by the Purchaser as compensation for the costs of the 2019B Bond being prepaid, an amount equal to the Cost of Prepayment. “*Cost of Prepayment*” means an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the applicable interest period, of a U.S. Treasury obligation with a maturity similar to the applicable interest period, minus (ii) the yield on the prepayment date, of a U.S. Treasury obligation with a maturity similar to the remaining maturity of the applicable interest period, and (b) the principal amount to be prepaid, and (c) the number of years, including fractional years, from the prepayment date to the end of the applicable interest period. The yield on any U.S. Treasury obligation shall be determined by reference to Federal Reserve Statistical Release H.15 (519) “*Selected Interest Rates*.” For purposes of making present value calculations, the yield to maturity of a similar maturity U.S. Treasury obligation on the prepayment date shall be deemed the discount rate. A “*Business Day*” shall mean any day other than a Saturday or Sunday or a legal holiday on which commercial lenders are authorized or required to be closed for business in Raleigh, North Carolina.

Beginning on the date that is six months after the Dated Date of this 2019B Bond and each quarterly date thereafter (i.e. each three months), the 2019B Bond shall be subject to optional redemption prior to its stated maturity at the option of the Town in whole or in part from money in the Sinking Fund established under Section 5 of the Issuance Resolution without penalty. The Town will give the Purchaser not less than 10 Business Days prior written notice of its intention to make a prepayment under this paragraph.

This Bond shall be a special obligation of the Town and the principal of, and interest and premium on, such Bond shall be secured solely by the sources set forth in the Bond Order (such sources being defined herein as the “*Pledged Sources*”), which are as follows:

- (i) amounts received by the Town from the State of North Carolina as approved pursuant to a U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) Federal grant for the State of North Carolina associated with Hurricane Matthew - FEMA-DR-4285-NC (Hurricane Matthew), including the amounts received by the Town from the State of North Carolina as the State of North Carolina's matching portion of the Federal grant;
- (ii) one or more additional sources of funds identified by the Board in future proceedings of the Board, so long as (i) the pledge of such sources does not constitute a pledge of the taxing power of the Town and (ii) the pledge of such sources is first approved by the Local Government Commission of North Carolina as set forth in Section 159I-30(i) of the General Statutes of North Carolina.

The uses of the Pledged Sources do not constitute a pledge of the Town's taxing power and the Town is not obligated to pay the principal of, or interest or any premium on, this Bond except from the sources set forth in the Bond Order and above.

**NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE TOWN ARE PLEDGED FOR THE PAYMENT OF THE PRINCIPAL OF, OR INTEREST OR ANY PREMIUM ON, THIS BOND, AND NO**

**OWNER OF THIS BOND HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER OF THE TOWN IN CONNECTION WITH ANY DEFAULT THEREON.**

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of North Carolina to exist, be performed or happen precedent to or in the issuance of this Bond, exist, have been performed and have happened.

This Bond is not valid or obligatory for any purpose until the certification hereon has been signed by an authorized representative of the Local Government Commission.

This Bond shall not be transferred to any person other than a bank, insurance company or similar financial institution unless such transfer is permitted pursuant to the Issuance Resolution.

*IN WITNESS WHEREOF*, the Town has caused this Bond to bear the original or facsimile of the signatures of the Mayor and the Town Clerk of the Town, each acting on behalf of the Town and this Bond to be dated as of the Dated Date above.

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Mayor

Date of Execution: January 14, 2019

The issue hereof has been approved by of Local Government Commission.

\_\_\_\_\_  
GREG C. GASKINS  
Secretary of the Local Government Commission

**CERTIFICATE OF AUTHENTICATION**

This is the Special Obligation Bond (FEMA Grant Project), Series 2019B is secured by the Pledged Sources (as defined in this Bond) and authorized by the Bond Order and Issuance Resolution.

**FINANCE DIRECTOR OF THE TOWN OF NAGS HEAD,  
NORTH CAROLINA, as Registrar**

Dated: January 14, 2019

By: \_\_\_\_\_  
Amy Miller  
Finance Director

**FORM OF ASSIGNMENT**

**ASSIGNMENT**

***FOR VALUE RECEIVED*** the undersigned hereby sells, assigns and transfers unto

---

(Please print or typewrite Name and Address,  
including Zip Code, and Federal Taxpayer Identification or  
Social Security Number of Assignee)

---

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

---

Attorney to register the transfer of the within Bond on the records kept for registration thereof,  
with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed by:

---

***NOTICE:*** Signature must be guaranteed by  
a Participant in the Securities Transfer  
Agent Medallion Program ("*Stamp*") or  
similar program.

---

***NOTICE:*** The signature to this assignment  
must correspond with the name as it appears on  
the face of the within Bond in every particular,  
without alteration, enlargement or any change  
whatever.

**TRANSFER FEE MAY BE REQUIRED**