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STATE OF NORTH CAROLINA

FIRE SERVICES AGREEMENT

DAVIE COUNTY

THIS AGREEMENT, is made and entered into this 21st day of April, 2020 by and between DAVIE COUNTY, hereinafter referred to as the "County," and Lone Hickory VFD DEPARTMENT hereinafter referred to as the "Department." (collectively, the "Parties" and individually as a "Party").

WITNESSETH:

WHEREAS, the Department has a recognized history of dedicated service, having provided essential fire protection and other related emergency services to the citizens of Davie County for all of the years of its existence; and

WHEREAS, the County and Department desire to contract with each other for the mutually agreed and mutually recognized goal of attempting to achieve the highest levels of protection to the persons who live, work, or are otherwise present in the County; and

WHEREAS, **North Carolina General Statutes §69-25.5** states that counties may provide for fire and rescue protection in a designated district by contracting with any incorporated nonprofit volunteer or municipal fire department; and

WHEREAS, this Agreement is authorized by **North Carolina General Statutes Sections 153A-11 and 153A-13 and N.C.G.S. Chapter 153A, Article 11**; and

WHEREAS, the Department is incorporated pursuant to Chapter 55A of the North Carolina General Statutes and is operating as an independent nonprofit volunteer fire department within Davie County, North Carolina; and

WHEREAS, the fire districts of Davie County have boundaries defined by descriptions on file in the Davie County Fire Marshal's Office; and

WHEREAS, the Department has acquired and owns equipment, land, and buildings for the operation of the Department; and

WHEREAS, the Department may employ trained, experienced and skilled personnel; however, the majority of its workforce is composed of trained, experienced and skilled volunteers; and

WHEREAS, the County levies and collects taxes from its citizens to assist in the funding of fire protection services for its citizens; and,

WHEREAS, the County is contracting with the Department to provide service within the area as further defined in Section 1 (12) (the "District").

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NOW, THEREFORE, in consideration of the mutual benefits inuring to the parties hereto, and based upon the mutual covenants contained herein and the considerations stated therein, the parties do hereby covenant and agree as follows:

SECTION 1 – DEFINITIONS

A. Agreed-Upon Procedure: A procedure in which a CPA is engaged to carry out those procedures of an audit nature to which the auditor and the entity and any appropriate third parties have agreed and to report on factual findings pursuant to that agreed -upon procedure as it is specifically described in Exhibit "A." attached hereto. In no event shall Agreed-Upon procedures vary in any way from GAAP and GAAS.

B. Agreement: This Fire Services Agreement, together with Exhibits "A," "B," "C," "D," and "E" each of which is incorporated herein by reference as an integral part of this Agreement.

C. Annual Budget: The line -item budget for the operation of the Department prepared by the Department and approved by its Board of Directors.

D. Annual County Allocation: The amount of County funds allocated by the County Commissioners for the support of the Department during the applicable Fiscal Year.

E. Applicable Law: All laws, rules, regulations, ordinances, codes, standards, orders, and actions of any and all governmental bodies, agencies, authorities, and courts that may now or hereafter be applicable to the performance of duties under this Agreement.

F. Approved Merger: A merger to which the Department is a party, and:

1. The other party to the merger is a Fire Department having its principal office and place of business in Davie County and is a Department which has entered into a Fire Services Agreement with Davie County containing the same terms and conditions as this Agreement; or

2. The other party to the merger and the Plan of Merger has been approved by the Fire Commission and the Davie County Manager.

G. Board of Commissioners: The Davie County Board of Commissioners.

H. Board or "Board of Directors": The Department's Board of Directors, as defined in N. C. G. S. § 55A-1-40 (2) is: "...the group of natural persons vested by the corporation with the management of the Department's affairs whether or not the group is designated as directors in the articles of incorporation or bylaws."

I. Capital Expenditure: All expenditures for purchases of buildings, building additions, alterations, repairs or improvements and all expenditures for or purchases of additional or replacement furniture, machinery, vehicles or equipment, hardware or software, where the

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cost of such expenditure or purchase is twenty-five thousand dollars ($25,000.00) or more, or where the depreciable life of the applicable item is in excess of three (3) years.

J. Capital Item: The actual property which was purchased or otherwise received by the Department as a Capital Expenditure.

K. CPA: Certified Public Accountant.

L. Response District: The designated response area that the Department contracts to serve, which for purposes of this Agreement is the Lone Hickory Response District, as further shown on the Fire Districts Map.

M. Effective Date: The effective date of this Agreement is the date this contract is signed and executed.

N. DCEMS: Davie County Emergency Medical Services.

O. EM: Davie County Emergency Management

P. Existing Debt: Any legally enforceable secured or unsecured obligation to pay money.

Q. Chief: The Chief of a Fire or Rescue Department.

R. Fire Districts Map: The most current version of the Davie County Fire Insurance Districts Map on file in the office of the Fire Marshal.

S. Fire Marshal: Any representative from the Davie County Fire Marshal's Office.

T. Fiscal Year: Davie County Fiscal Year is from July 1st through June 30th. The Department's Fiscal Year is: July 1st through June 30th.

U. GAAP: Generally accepted accounting principles.

V. GAAS: Generally accepted auditing standards.

W. IC: Incident Commander

X. Services: Fire protection, heavy/technical rescue, medical responder, and associated emergency-related services (as defined in Section 3), and those activities undertaken by the Department in furtherance of fulfilling the above.

SECTION 2 - PURPOSE

The purpose of this Agreement is to establish the terms and conditions under which the County is contracting with the Department to provide firefighting and fire prevention services and other emergency services (as defined in Section 3) during emergencies and disasters, and to

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provide for efficient firefighting and emergency services to the persons who live, work and/or are otherwise present in the County.

SECTION 3 - SERVICES FURNISHED BY THE DEPARTMENT

The Department agrees to provide its Services throughout the District and elsewhere in accordance with the standards and other requirements in a manner that complies with all Applicable Law, including by illustration, but not limited to, those applicable rules and regulations of the North Carolina Department of Insurance and the Insurance Services Office, Inc.

The Department agrees to establish safeguards to prevent the appearance of or actual conflicts of interest or personal gain including, but not limited to the adoption of an ethics policy, and to abide by the ethics policy and to perform its services without the appearance or the actuality of conflicts of interest.

The Department further agrees to provide the Services in accordance with the requirements set forth in this Agreement in a professional, efficient and workmanlike manner to all persons and property in its assigned District.

The Department agrees to provide the following services upon request during times of emergencies:

A. To furnish and provide continuing fire protection service and other emergency services to all residents of the fire district, to all persons present in the District, and to all real and personal property lying within the boundaries of the District and to other areas of the County as may be agreed to in automatic mutual aid agreements with other fire departments within the County; To the extent the Department chooses to operate a Medical Responder program, the Department shall adhere to EMS system guidelines established for the operation of Medical Responder programs in Davie County and shall adhere to the Davie County EMS System Continuing Education Program.
B. The Department shall give the County Manager a minimum of 120 days' notice of any change in the level of medical services, and any Department who chooses not to participate in the Medical Responder program may see a reduction in funding.
C. To dispatch upon the call of any person within the District the equipment necessary to answer the call and adequate personnel to operate such equipment in the sole judgment of the Chief or his/her designee; however, if, at the time of the call or dispatch, the Department is actively engaged in providing services to another incident, such that the type of equipment and personnel needed is not available, this Agreement does not require the Department to stop rendering services to the emergency it is still actively engaged in assisting in order to provide services to another location.
D. To provide fire investigation services as provided in N. C. G. S. 58-79-1 and as detailed in Section 22 of this Agreement;
E. To provide technical rescue services, if all the following conditions are met:
    a) if the Department holds a certification through the North Carolina Association of Rescue and Emergency Medical Services or has obtained training on a rescue service discipline; and, such services shall be performed inside the scope of practice

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of the certification(s) or training, to the County and within the District and other locations when called to provide those services by the County or another fire department (s) or rescue squad(s). A change in the level of technical rescue services shall require a 120-day notice to the County Manager;

b) If the technical rescue services requested shall be inside the scope of practice of the certification(s) or training the Department has received; and,

c) If the County dispatches the Department to help with the technical rescue activity.

F. To provide lifesaving and property protection measures as necessary;
G. To provide search and rescue services assistance as requested by EM;
H. To perform evacuation assistance as requested by EM;
I. To respond to motor vehicle accidents;
J. To clear or assist other agencies to clear public roads and rights of way of storm debris to allow emergency service vehicles to reach their destinations as needed.
K. To respond to emergency calls from the 911 Communications Center and the Fire Marshal's Office.

SECTION 4 - SERVICES FURNISHED BY THE COUNTY

In accordance with this Agreement, and at the County's sole expense outside the scope contractual funding of the Department pursuant to this Agreement, the County agrees to furnish the following services to the Department:

A. 911 communications and dispatch;
B. Fire investigation services as provided in N. C. G. S. 58-79-1 and as detailed in Section 22 of this agreement;
C. Maintenance and repair of the County water system including Fire Hydrant replacement and or repair when needed;
D. Emergency scene assistance services in support of the Department's efforts;
E. Maintenance of the County radio system;
F. Assistance to the Department with fire prevention and community awareness programs within the Department's District;
G. A staffed EMS ambulance and/or medical services rehab unit with certified Advanced Life Support (ALS) personnel at all structure fires or other emergency scenes with extended time periods for the medical monitoring of the firefighters and other emergency workers on the scene, if requested by the IC;
H. A staffed EMS ambulance and medical services rehab unit as requested on the scene of any live fire training within the District, provided that the Department has given at least thirty (30) days' notice to the DCEMS of such live burn;
I. A common incident reporting software, as agreed to by all Departments, and when applicable and necessary, software updates and annual software support, provided that personnel information and data entered into such software shall be the sole and exclusive property of the Department, except as may otherwise be required by law or by court order;
J. Such additional services and support may be needed and mutually agreed between the County and the Department as circumstances may dictate from time to time.
K. Inspections of all public buildings as set forth in the North Carolina Building Code and the North Carolina General Statutes.

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L. Investigations of fires, arsons, fire deaths, and fire injuries when requested by the Chief or Designee of the District in which the fire occurred.
M. Provide National Fire Protection Association resource materials on fire prevention, instructional or fire service standards that shall be made available through the Fire Marshal's office electronically or in print; and
N. Replace disposable medical supplies, equipment, and/or medications that are carried on Davie County ambulances when used in direct patient care when required under the medical protocols of Davie County Emergency Medical Services (DCEMS).
O. Evaluate and provide prior approval for all requests for fire alarm testing.

SECTION 5 – DEPARTMENT'S NON-PROFIT CORPORATION STATUS

The Department agrees to maintain its nonprofit corporation status pursuant to Applicable Law, including without limitations the United States Internal Revenue Service (IRS) regulations and Chapter 55A of the North Carolina General Statutes at all times during the term of this Agreement. In the event that the Department loses its non-profit corporation status with the Internal Revenue Service, the Department shall promptly, but in any event no later than five (5) days from the time when the Department receives notice thereof, report the loss of the non-profit corporation status to the County. The Department will establish safeguards to prevent the appearance of or actual conflicts of interest or personal gain including, but not limited to the adoption of an ethics policy.

The Department will comply with all State and Federal laws applicable to the Department as a non-profit corporation.

SECTION 6 - INSURANCE SERVICES OFFICE RATING

The Department agrees to engage in efforts to maintain or improve its rating (as of the Effective Date of this Agreement) with the North Carolina Department of Insurance and the Insurance Services Office, Inc., ("ISO") throughout the term of this Agreement. The Department agrees that its goal will be to have an ISO rating no poorer than a 9S (but its goal will be to strive to achieve a Class 6) rating for the territory within five (5) road miles of the main station or substation(s), and no poorer than a 9E for the territory more than (5) road miles but less than six (6) miles from the main station or substation(s). If any part of the fire district lies further than six (6) road miles from the main station or substation and is classified as a Class 10 rated area, the Department shall endeavor in good faith and with due diligence to eliminate such areas. The Department shall endeavor in good faith to meet the above goal of a Class 6 rating, using a method 3 style rating, unless a method 1 style rating will cover 100% of the fire district. The Department agrees to endeavor in good faith to make changes to its internal systems to obtain the Class 6 rating for all of the structures within its District.

The Department shall meet the then-current North Carolina Response Rating Schedule (NCRRS) requirements for fire hydrant testing and maintenance (at least once every five years) to receive full credit under the NCRRS. The Department shall not perform hydrant flushing activities between Memorial Day and Labor Day. The Department shall allow the County to review and copy the Department's hydrant flow, and maintenance records. A copy of all hydrant flow data

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shall be provided to the utility after completion. Records of fire hydrant tests and maintenance conducted by the Department shall be available for review by the Fire Marshal's Office.

The Department shall give Davie County Public Utilities forty-eight (48) hours' notice and receive prior approval from Davie County Public Utilities prior to flushing, testing or using fire hydrants located within the County, except for use during an actual emergency. The Department agrees that it will refuse all requests from all citizens to use fire hydrants to fill swimming pools. To ensure that the Department receives full credit for having access to a working set of fire hydrants, the County agrees that it will repair any non-working fire hydrants within forty-five (45) days of being notified by the Department that a fire hydrant is not working. The Department shall notify the Davie County Public Utilities Department a minimum of 48 hours in advance of any scheduled live burn training event if the Department intends to use a Davie County fire hydrant, and the Department shall provide the address and date of the training event, in order to meet possible water demands for the training event.

In the event that the Department's ISO rating is lost solely due to the Department's inability to meet the required ISO standards, or if the Department is placed on probation by the North Carolina Department of Insurance, the Department agrees immediately to undertake and to implement such reasonable actions as may be deemed advisable by the Department to improve its ISO rating to a level reasonably achievable under the circumstances as they exist at that time. The Department shall prepare and submit to the County a plan to obtain its previous ISO rating again within a one (1) year period. The plan shall be submitted within 30 days of the time when the Department is notified of having a rating increase. The plan shall include specific steps to be taken to attain the previous ISO rating, including, without limitation, a project timeline and the projected costs associated with taking the corrective action.

In the event the Department believes its rating increased due to the action of the County, the Department shall notify the County Manager. For example: If points are deducted from the Department's ISO rating because the County's communication center or the County's water system is not functioning adequately, the County shall endeavor in good faith and with due diligence to work with the Department to quickly improve any of its systems which have caused the ISO rating to increase.

SECTION 7 – RESPONSE TIMES AND RESPONDING PERSONNEL

The Department and the County mutually agree that Department's response times, and the amount of trained personnel on emergency scenes are an essential component of providing an acceptable level of service to the community. The parties agree that the Department will adopt a goal of having the Department's response times, and on-scene staffing meet the standards set forth in the National Fire Protection Association (NFPA) Standard 1720. The County and the Department agree to collaboratively monitor response times, on-scene staffing levels and to develop strategies to address any response time, and/or on-scene staffing issues if they arise.

Response times will be measured beginning with dispatch time as reported in the Computer Aided Dispatch ("CAD") Event Report and ending with the On-Scene Time as reported in the CAD Event Report. For fire or rescue calls, On-Scene Times will be measured when the first fire

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suppression apparatus arrives on the scene. For medical calls, On-Scene Times will be measured when a medically trained member of the Department arrives on the scene with a radio.

If the Department fails to meet the goals set forth in NFPA 1720, the following shall take place: (1) a plan of strategies aimed at complying with NFPA 1720 using the Department's existing resources shall be developed; and (2) the Department's Board of Directors shall approve of the plan. After the plan has been approved, if the Department fails to implement the strategies outlined in the plan, that failure may be considered by the County as a breach of the Agreement.

In the event there are more than three incidents of rescue or fire during any one fiscal year when the Department is dispatched but does not respond, those failures to respond may constitute a breach of contract. If the Department has more than three such failures, the Fire Commission shall assess the events and the circumstances then existing, and the Department's ability to respond. After its investigation, if the Commission is of the opinion that the Department could have responded to the calls using the existing resources, the Commission may recommend that the County deem this Agreement to have been breached, or may recommend that the County not deem the Agreement to have been breached.

SECTION 8 - DEPARTMENT TRAINING

The Department agrees to adopt guidelines, no later than ninety (90) days from the Effective Date of this Agreement, which address appropriate initial training and continuing education of firefighters of the Department. These guidelines will ensure that such initial training and continuing education strive in good faith to meet or exceed all requirements of the State of North Carolina, including, without limitation, a minimum standard of thirty-six (36) hours of fire training per Department member annually.

The Department shall also maintain training records for each volunteer or employee on its roster. Training records shall include, but not be limited to, the following: names of courses that have been completed, time spent in training for each course, the course dates, instructors, and the place where the course was held.

Appropriate information shall be entered into the Emergency Reporting Database on all training held by the Department or attended by its volunteers and employees.

SECTION 9 - PROCESS FOR FIRE DEPARTMENT FUNDING

In order to assist the County with establishing the amount of the annual appropriation to the Department for providing the Services, the Department agrees to conform to the County's budget calendar and to participate in the County's budget processes for adoption of the Fiscal Year budget. The Department agrees to submit a budget approved by its Board of Directors to the County Manager based upon the Department's estimate of the costs of providing service for the upcoming fiscal year. The Department agrees to provide its budget submittal in a form specified by the County. The Department shall provide in its budget submittal sufficient information for the County to determine the source(s) and estimated amounts of all revenue anticipated by the Department for the coming Fiscal Year.

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To plan for budget allocations for the next fiscal year, and for the future, the Department agrees:

(i) to submit annual budget estimates electronically to both the Davie County Finance Office and the Davie County Manager on the standard forms used by the Davie County Fire / Rescue Departments;

(ii) to submit to the County a current and complete replacement schedule for Capital items and a listing of capital equipment items that are planned to be purchased within the next fiscal year;

(iii) to submit a copy of the last IRS Form 990 which the Department filed;

(iv) the CPA compilation for the immediate past fiscal year;

(v) to allow the County Fire Marshal's Office, or designee, upon reasonable notice, to visit any of the Department's stations and perform an inventory of all Capital items; and

(vi) to submit any revisions to the Department's bylaws or Articles of Incorporation which it has adopted since the last budget submission.

SECTION 10 - COLLECTION OF FIRE TAXES—ANNUAL COUNTY ALLOCATION

It is understood and agreed by the parties that the amount of the Fire Taxes imposed by and through the Board of Commissioners is an estimate of the Taxes required to generate anticipated revenues. The total amount of revenue generated is contingent upon the collection rate in a given Fiscal Year.

Pursuant to the budgetary authority set forth in N.C.G.S § 159-13, the amount appropriated to the Department for Fiscal Year 2019-2020, and for any fiscal year thereafter that this Agreement remains in effect, is ultimately determined and adopted since the last budget submission by the Board of Commissioners as deemed in its discretion.

When determining the Annual County Allocation, the County shall take into account whether or not the Department provides Medical Responder services, and those Departments which do provide Medical Responder services may be funded at a higher comparative level than Departments which do not provide the service.

SECTION 11 - PAYMENT OF FUNDS TO THE FIRE DEPARTMENT

After the Department and the County have properly executed this Agreement, The County agrees to pay the Department the Annual County Allocation appropriated by the Board of Commissioners for the Fiscal Year. The County will remit four (4) quarterly payments annually to the Department no later than the last day of July, October, January and April.

Any fire or rescue agency that fails to comply or make satisfactory improvements to comply with the Fire and Rescue Protection Agreement, shall have all future allocated payments suspended or revoked by the County until sustainable improvement has been demonstrated and approved by the Davie County Fire Commission, subject to the provisions set forth in Section 26 below.

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SECTION 12 - BOOKS AND RECORDS OF THE DEPARTMENT

As an independent non-profit corporation, the Department agrees to generate and maintain all required records and data and shall maintain such records and data in accordance with Generally Accepted Accounting Principles (GAAP). The Department agrees that the County will have reasonable access to all books, financial records and audit reports. The Department agrees to provide the County adequate documentation of all of its receipts and disbursements, including without limitation, those related to the expenditure of any funds appropriated and disbursed to the Department under this Agreement.

The Department agrees to allow the County, or its authorized agent, at the County's sole expense, to inspect and examine all records described above on a date and at a time mutually agreed between the County and the Department within thirty (30) days of the County's written request for such an inspection. The County, in turn, agrees that any and all records, data, receipts and other documents examined by the County pursuant to this Section are and will remain in the sole possession and ownership of the Department. The Departments shall provide a copy of the IRS Form 990s, the Department's audit (if there was an audit), and the auditor's accompanying memorandum. If the Department is one of those selected for the Agreed Upon Procedures, a copy of other records, data, receipts and other documents shall be made available to the independent Certified Public Accountant.

Nothing other than the Department's last five (5) years' IRS Form 990s, its audit, and the auditor's accompanying memorandum shall be considered public records, unless otherwise provided by law or court order.

SECTION 13 - DAVIE COUNTY FIRE AND RESCUE ASSOCIATION OR ANY OTHER LIKE KIND ENTITY ADOPTED BY THE CHIEFS

The Department may and is encouraged to participate, through membership, in the Davie County Fire and Rescue Association or any other like kind association adopted by the Chiefs, in an effort to meet the following objectives:

A. To coordinate the efforts of the Fire Departments of Davie County.

   1. To promote the exchange of information among all fire departments;
   2. To assist in the training of all firefighters within Davie County;
   3. To keep all fire departments informed of the quality and quantity of equipment being used among the fire departments in Davie County; and
   4. To keep all fire departments informed about new or existing equipment, and ways that fire departments are being operated across the United States, North Carolina, and locally.

B. To maintain a liaison with Davie County, to assist in promoting excellence in fire protection; and

C. To keep all fire departments within Davie County abreast of the benefits (local, state and federal) available to firefighters and their families.

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SECTION 14 - INSURANCE REQUIREMENTS

The Department shall maintain insurance coverage as specified in Exhibit B. The Department may purchase such other coverage as it may deem appropriate for the protection of the Department, its employees, members or personnel. Copies of all certificates of insurance shall be provided to the County.

SECTION 15 - INDEPENDENT CONTRACTOR

The Department is an independent contractor providing a necessary public service to citizens of Davie County. No board member, officer, employee, or agent of the Department is or shall be considered an employee of the County. The relationship between the parties shall be limited to the performance of this Agreement in accordance with its terms.

The County and the Department agree that the Department shall operate and act as an independent contractor in accordance with the standards set forth herein, and the County shall not be responsible for any of the Department's acts or omissions.

Being a party to this contract and performing it shall not create any liability for the County to provide any benefits, including, without limitations, participation in pension plans, to the Department, its officers, agents, or employees.

SECTION 16 – INDEMNIFICATION, AND ADDITIONAL INSURED COVERAGE

The Department agrees to protect, defend, indemnify and hold the County, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of any kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action arising solely and singularly from any act or omission by the Department, its officers, agents, and employees, up to the limits of insurance as detailed herein. The indemnification provided for herein shall not be construed as a waiver of any applicable defense of governmental, sovereign, qualified, public official, statutory, or common law immunity, and shall not prevent the County from asserting any defense of such immunity; provided that if a court of competent jurisdiction determines that no such immunity applies, then the indemnity provided for herein shall apply.

The Automobile Liability Policy, General Liability Policy, Umbrella Liability Policy and Management Liability Policy shall name the County of Davie as an additional insured. The Department shall furnish the County of Davie with certificates of insurance showing the type of policy, limits of liability, the name of insurance companies, policy numbers, effective dates and expiration dates of policies.

SECTION 17 – FIRE, RESCUE AND MEDICAL REPORTS

The Department agrees to complete an incident report immediately following all fires, or as soon thereafter as reasonably practicable. The incident report should be entered timely into the

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National Incident Reporting Software (NFIRS), according to NFIRS guidelines. The Department agrees to forward a copy of all incident reports to the Fire Marshal's Office at the end of each quarter in accordance with N.C.G.S. § 58-79-45. The Department shall maintain fire incident reports and make the reports available to property owners, upon request.

The Fire Department also agrees to make medical reports available to the County's EMS provider. The disclosure of medical reports or other data pertaining to personally identifiable health information shall be made to the EMS provider in accordance with all Applicable Law.

SECTION 18 - FINANCIAL AUDIT AND FINANCIAL INFORMATION

The County will contract with a CPA firm of the County's choosing to perform the Agreed-Upon Procedure, for three Departments annually, and to provide an accompanying management letter. The Agreed-Upon Procedure and accompanying management letter shall be prepared in accordance with the definition of the Agreed-Upon Procedure in this Agreement and the Exhibits that are a part of it. The County agrees to pay all fees and expenses charged by the CPA firm that it hires. The Department understands that Agreed-Upon Procedure and the management letter are agreed to in consideration of not only the funding provided under this Agreement, but also the other consideration provided to the Department by the County, including, without limitation, those services set forth herein.

If the Department is one of the three selected, then on or before December 31st, the Department agrees to provide the CPA firm with access to all records needed to perform the Agreed-Upon Procedure and the accompanying management letter. All required information will be delivered to the CPA firm's office. The Agreed-Upon Procedure will be completed by March 1st of the then-current Fiscal Year, and the County agrees to provide the Department a copy of findings of the CPA firm and the accompanying management letter within thirty (30) days of completion.

The County and the Department mutually recognize, acknowledge and agree that all documents and data owned by the Department and entrusted to the auditors shall remain private and confidential between the auditors and the Department. Under no circumstance shall any documents or data owned by the Department as an independent non-profit corporation and used in any way by the auditors to conduct the Agreed Upon Procedure and memorandum, be made a matter of public record, except the Department's last five (5) years' IRS Form 990s, its audit, and the auditor's accompanying memorandum, and otherwise as by law provided or by order of the Courts.

In the event that the auditor identifies any deficiencies during the course of the Agreed-Upon Procedure, the Department shall provide to the County an explanation for any such deficiencies. If the County deems the deficiency to be a breach of this Agreement, the procedure in Section 26 shall be followed.

SECTION 19 - PUBLIC MEETINGS, RECORDS, AND INPUT

The Parties agree that the Department is a non-profit corporation formed pursuant to Chapter 55A of the General Statutes of North Carolina, and that it has been granted Section 501(c)

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status by the Internal Revenue Service. It is an independent contractor. It is not an agency of the County. Its employees are not county employees. It is not one of the non-profit corporations required by G. S. 55A-3-07 to comply with Article 33C of Chapter 143. It is not an agency over which the County has supervisory responsibilities and control, except as provided in this agreement. It is not a public body within the meaning of Article 33C of Chapter 143 of the General Statutes; and its meetings are not public meetings, and its records are not public records as that term is defined in North Carolina General Statutes Chapter 132-1, except to the extent that they may come into the possession of the County pursuant to the terms of this Agreement.

The Department agrees that it will: (i) post a schedule of the all the regular meetings of the Board of Directors on its website or Facebook page, if it has either of those, and post notice of the Board meetings on a sign on the Fire Department premises at least 5 days before each regularly scheduled board meeting if there is a sign on the premises to post the noticed of meeting. ii) hold regularly scheduled open board meetings and allow the public to attend (iii) take minutes of all such regular, non-closed meetings that would enable a person not in attendance to have a reasonable understanding of the general topic(s) addressed therein, and if requested (iv) provide to the County regular non-closed meeting minutes after such meeting minutes have been adopted formally by the Department's Board of Directors. The Department agrees herein that it shall endeavor in good faith to conduct its meetings in an open and public fashion and on a regular basis but shall reserve for itself all of the rights conferred upon it as a non-profit corporation to conduct such other non-public meetings as are required in the best interests of the corporation.

Additionally, the Department agrees that its bylaws have reasonable provisions enabling citizens of the District to participate in the affairs of the Department, as determined necessary by the Board of Directors

SECTION 20 - NEW FIRE STATIONS AND SUB-STATIONS

The Department shall coordinate all construction of new facilities with the Fire Marshal's Office and the Davie County Manager. The Department shall retain all control and decision-making authority regarding the bid process and the design and building processes.

The Department shall comply with all applicable laws related to the construction process of building a new station or sub-station, except that to save public funds, the Parties agree that the County may waive all fees related to building new stations or sub-stations and may grant variances to the Zoning Ordinance, but is not obligated to do either.

SECTION 21 - DISASTER PLANNING

The County and the Department shall cooperate in establishing disaster plans and in conducting exercises pursuant to disaster plans administered by the Davie County Department of Emergency Management.

SECTION 22 - FIRE INVESTIGATIONS

The Department agrees to ensure that its officer in charge at all fire scenes attempts to determine the origin and cause of every fire (as outlined in NCGS 58-79-1). When the officer in

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charge cannot determine the origin and cause of a fire, or if the cause is suspected to be incendiary in nature, the officer in charge shall request a representative from the Fire Marshal's Office and/or law enforcement to conduct an investigation and provide scene security. The Department may also ask for a response from the Fire Marshal's Office for all situations that include injuries or deaths involving fires, explosions, or burns. Fire department operations shall not cease for the purpose of protecting the integrity of the scene and subsequent investigation prior to the arrival of the County Fire Marshal's Office or local law enforcement. All suspicious or incendiary woods, grass, or brush fires shall be reported immediately to the North Carolina Forest Ranger and the fire scene shall be secured until the Forest Ranger arrives.

The Department agrees to provide whatever reasonable assistance is needed by the Fire Marshal's Office staff and/or North Carolina Forest Ranger at the fire scene.

The County agrees, at the conclusion of the fire origin and cause determination, to complete the investigation module of the incident report in the County's records management system and to provide the Department with a copy of the County's incident report in a timely manner for the Department's required entry into its fire reporting software.

SECTION 23 - NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)

The National Incident Management System (NIMS) is a systematic, proactive approach to guide departments and agencies at all levels of government, nongovernmental organizations, and the private sector to work together seamlessly and manage incidents involving all threats and hazards—regardless of cause, size, location, or complexity—in order to reduce loss of life, property and harm to the environment. NIMS guidelines and policies currently in effect are published by the Department of Homeland Security and were originally established by Presidential Directive. The Department shall use NIMS on all incidents.

SECTION 24 - FIRE DISTRICT

The primary District of the Department includes the property lying within the boundaries of the District as described in Exhibit "C."

SECTION 25 –MUTUAL AID AGREEMENT

N.C.G.S. § 58-83-1, authorizes mutual aid assistance between fire departments. fire departments are allowed to exercise full authority to send firefighters and apparatus beyond the territorial limits of the primary District which they normally serve.

The Department agrees that it will enter Mutual Aid Agreements with other Departments which are independent corporations only for the purposes of assisting with emergency situations and complying with the terms of this Agreement.

The Emergency Management Department, the Fire Marshal's Office, or another agency may notify the Department that its automatic or mutual aid is needed. When the Department is notified that an emergency does in fact exist and Department's aid is needed, the Chief or another person delegated that authority by the Chief, shall have the authority to order available apparatus,

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equipment, and personnel as may be required and available to respond to assist with the emergency. The Chief or other person delegated authority by the Chief shall first determine that the automatic aid or mutual aid request may be honored without impairing the Department's capacity to provide protection within its own jurisdiction. When that determination is made, the Chief or other person delegated authority by the Chief may take appropriate action with regard to furnishing the requested aid.

The Department providing assistance shall be responsible for the conduct and actions of its personnel and the costs arising out of the use of its personnel and the use of apparatus, equipment or tools.

The Department waives any claim it may have against the County which claim may be based on the fact that the Department entered into a Mutual Aid Agreement, or that the County requested or required that mutual aid be provided to another Department.

SECTION 26 – BREACH OF CONTRACT-- SUSPENSION OF FUNDING—PROCEDURE

In the event the Department fails to comply with the requirements of this Agreement, the payment of County funds may be suspended. The parties understand and agree that fire protection and other emergency services are critical to the health, safety, and welfare of the citizens of Davie County, and that it is impossible for the Department to provide those services without adequate funding. If the County determines that the Department has failed to comply with the requirements of this Agreement, including the requirements that the Department maintain its non-profit status with the Internal Revenue Service and the requirement that the Department maintain its corporate status by making regular filings and payments to the Secretary of State's office, before the County suspends the quarterly payments, the parties will proceed as follows to prevent the disruption of services.

1. The County shall notify the Chief and Chairperson of the Department's Board of Directors in writing of the deficiencies, specifying all items to be changed, improved, or stopped. Service of notice on the Chief and the Department's Board Chairperson shall be notice to the Department

2. After it receives notice, the Department shall have thirty (30) days to cure any such deficiencies. At the expiration of the 30-day cure period, the County shall make a second inspection to determine if the deficiencies have been cured, or if appropriate steps have been completed which are likely to cure the deficiencies.

3. If, after the inspection, the County's Fire Marshal's Office determines that the deficiency or deficiencies have not been cured, and that sufficient efforts to cure the deficiency or deficiencies have not been undertaken, the Fire Marshal's Office shall notify the County Manager, the County Fire Commission and Chairman of the Department's Board of Directors in writing. Service of notice on the Department's Board Chairperson shall be notice to the Department.

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4. After notice to the Department's Board Chairperson, the County Manager may suspend payments by the County to the Department until such time as the Department shall meet the minimum requirements of this Agreement.

SECTION 27 - TERM AND TERMINATION

A. **Term:** This Agreement shall commence on the Effective Date and shall remain in full force and effect for an initial period ending on June 30, 2023, at midnight ("Initial Term") unless earlier terminated as provided herein. Upon the expiration of the Initial Term and each subsequent renewal term, this Agreement shall automatically renew for an additional term of one year thereafter, based on the County's fiscal year period from July 1st through June 30th of each year; unless modified by mutual Agreement or terminated by either party as provided herein.

B. **Termination:** This Agreement may be terminated as follows:

1. **For Cause:** By either party, hereto in the event the other party breaches any of its material obligations if the procedure set forth in Section 26 has been completed, and the breach continues to exist.

Certain specific situations are of such consequence that the Agreement may be terminated For Cause without following the procedure set forth in Section 26. The following specific actions by the Fire Department shall allow the County to terminate the Agreement For Cause upon five (5) days' notice:

a) **Bankruptcy or Receivership**: If the Fire Department:

1. Is placed in a Receivership pursuant to Article 38 of Chapter 1 of the General Statutes or is placed in any type of bankruptcy pursuant to 11 U. S. Code 101, et. seq.; and

2. If the proceeding is not discharged or vacated within sixty (60) days of being filed; and

3. If termination of the Agreement is approved by the Court administering the bankruptcy or receivership.

b) **Insolvency:** If the Fire Department is adjudicated insolvent, under state and/or federal regulation, or by a Court having jurisdiction to make that determination.

c) **Cessation of Operation:** If the Department ceases to do business or otherwise terminates its business operations.

d) **Non-Approved Merger:** If the Department is a party to a merger other than an Approved Merger as defined in this Agreement.

e) **Transfer of Assets:** If the Department makes a transfer of assets that does not comply with Section 28.

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f) **Accounting Deficiencies:** If the Department is unable or unwilling to make a satisfactory plan for correcting any deficiencies found to exist by an auditor.

g) **Loss of Non-profit Status:** If the Department loses its non-profit status with the Internal Revenue Service of the State of North Carolina.

2. **Municipal Takeover:** The County or Department may terminate this Agreement on one-hundred and eighty days (180) days' prior written notice in the event a municipality or municipalities within Davie County begin(s) to provide the Services provided by the Department or otherwise contracts independently with the Department for the Services within the municipal limits such that the County loses jurisdiction for providing the Services within all or substantially all of the Department's District.

3. **Without Cause upon Notice:** Either party hereto, upon notice of one-hundred and eighty days (180), may terminate this contract.

4. **Non-Renewal Notice**: The parties hereto may terminate this Agreement at the end of the term upon written notice to the other party no later than one-hundred and eighty days (180) days prior to the expiration of the Agreement.

5. **Notices:** Notices required in this Section shall be reasonably specific concerning the cause for termination and shall specify the effective date and time of termination.

6. **Effect of Termination:** Termination of this Agreement for any reason shall not release any party hereto from obligations incurred under this Agreement prior to the date of termination. All services required to be performed under the terms of this Agreement shall be provided through the effective date of termination, and all payments which come due from the County to the Department through the effective date of termination shall be paid. Termination of this Agreement for any reason shall not form the basis of any claim for loss of anticipated profits by either party.

7. In the event this Agreement is terminated, or it expires, and is not renewed, and if, as a result, the Department ceases to conduct business, the provisions of Section 28 shall control any disposition of the Department's net assets.

SECTION 28—ACQUISITION AND DISPOSITION OF DEPARTMENT PROPERTY

A. **County's Interests:** The County has an interest in being assured that the Department's assets will be acquired and disposed of in a legal manner and for written consent of the use of the taxpayers of Davie County because it assists with the funding for ongoing operations of the Department. The County also has an interest in being assured that the net assets purchased with County funds be used to provide a service to its residents.

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B. **Applicable Law Limitations on the Department's Legal Ability to Disposition of its Assets:** The Department is required by this Agreement to follow all Applicable Law in conducting its business. The Department cannot agree to a term of this Agreement which contravenes Applicable Law. Examples (but not an exhaustive listing) of Applicable Laws which may control whether the Department has any net assets to be disposed of are as follows:

1. **Merger:** In the event of an Approved merger, the Department will comply with the provisions of its Articles of Incorporation, its Bylaws, and the provisions of Article 11 of Chapter 55A of the General Statutes of North Carolina and with its Plan of Merger.

   Fire Departments regularly merge with other neighboring Fire Departments in order to limit administrative and other costs, to provide better leadership, to provide more uniform and improved types of services, to make more efficient use of resources and for other reasons. Ordinarily, when two non-profit Fire Departments merge, one of them assumes all the debts, obligations and contractual obligations of the other and receives all the assets and contractual rights of the other. Existing Agreements are not terminated, but they continue in effect and are honored by the surviving Department.

   It is not the intention of either party to prevent the Department from being a party to an Approved Merger as that term is defined in this Agreement. In the event of an Approved Merger, there will be no net assets to be disposed of. If there are remaining assets to be disposed, they will be disposed of as provided in this Section.

   If the Department is a party to an Approved Merger, it shall arrange that the surviving entity to whom assets may be transferred will complete payment of all its debts and obligations.

2. **Transfer of Assets:** The Department will only make a transfer of assets in compliance with the provisions of its Articles of Incorporation, its Bylaws, the provisions of Article 12 of Chapter 55A of the General Statutes of North Carolina, the Internal Revenue Code, and with this Section of this Agreement.

3. **Dissolution**. In the event of dissolution, the Department will comply with the provisions of its Articles of Incorporation, its Bylaws, and the provisions of Article 14 of Chapter 55A of the General Statutes of North Carolina and all other Applicable Law and with this Section of this Agreement.

4. **Distribution**: The Department will not make a distribution except upon dissolution. If the Fire Department disposes of some of its property during the course of normal business operations, it shall do so as provided in this Section. In the event of distribution upon dissolution, the Department will comply with the provisions of its Articles of Incorporation, its Bylaws, and the provisions of Article 13 of Chapter 55A of the General Statutes of North Carolina, all other Applicable

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Law, and with this Section 28 of this Agreement. Any remaining assets shall be distributed as provided in this Section.

5. **Mortgages and Security Agreements:** At times, a Department may place a lien upon its property to secure a loan in the course of normal business operations. If there is a lien attached to an item of real or personal property, the lienholder must be paid and satisfied before that property can be transferred to any other entity. Any net assets remaining shall be disposed of as provided in this Agreement. A Department shall not cause a lien to be placed on any property which is owned by the County, including but not limited to any radio equipment purchased by the County and loaned to the Department without consent by the County Manager.

6. **Bankruptcy and Receivership:** The Department will comply with the terms of the United States Bankruptcy Code if it is placed in bankruptcy, or with the terms of Article 38 of Chapter 1 of the General Statutes of North Carolina if a Receiver is appointed by the North Carolina Courts to control its operations. Any net assets remaining shall be distributed as provided by this Section.

C. **Acquisition of Property with Funds from a Federal Agency:** If the Department receives any funding from a federal agency, the Department shall adopt a procurement policy that meets federal standards.

D. **Disposition of Property Acquired Before the Date of this Agreement During the Normal Course of Business:** Within the confines of its Articles of Incorporation, its Bylaws and Chapter 55A of the General Statutes, and other Applicable Law, The Department will obtain a reasonable value for any property it owns having a substantial value of more than $5,000.00, which property has been purchased in whole or in part with County funding. The County, as well as Fire Departments within the County, shall have the option to purchase the property prior to the property being offered to an outside organization. Any proceeds obtained from the sale of property acquired, in whole or in part, with Fire Tax shall be used in the same manner as Fire Tax.

E. **Disposition of Property Purchased After the Effective Date of Agreement**. Any equity remaining either as assets or as proceeds from the sale of assets which were purchased with Fire Tax Funds and/or County general funds after the effective date of this Agreement and which remains after the Department complies with all Applicable Law shall be returned to the County within ten days of the time it is determined to be excess, unless otherwise agreed to by the fire or rescue agency and County Manager.

F. **Disposition of Assets upon Dissolution.** If the Department is dissolved, Chapter 55A and all other Applicable Law requires the Department to liquidate its assets and pay its debts. To the extent that all Applicable Law allows, the Department shall distribute all assets remaining after the payment of debts in the following order of priority:

1. To a non-profit entity or government entity providing fire protection within the District of the Department.

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2. If there is not a non-profit entity as described in 1. above which wants the property, then the Department shall transfer its remaining assets to a non-profit entity which provides fire and/or rescue services to Davie County.

3. If there is not a non-profit entity as described in 2. above which wants the remaining assets, the Department shall transfer its remaining assets to the County.

G. **When Section Not Applicable.** Paragraph F. of this Section shall not apply if the County terminates this Agreement and begins to provide fire protection and rescue services through a County Agency, notwithstanding the facts (1) that the Department is in compliance with this Agreement, and (2) has not breached the Agreement, and (3) the Department is able and willing to continue to comply with this Agreement.

SECTION 29—COMPLIANCE WITH LAWS ABOUT EMPLOYING IMMIGRANTS, IRAN DIVESTMENTS, ISRAEL, AND CONSTITUTIONAL LIMITS ON INDEMNIFICATION

At all times when this Agreement is in effect, neither Party to it shall do, or encourage the doing of any act or omission which does or possibly could place the Party in any jeopardy of being accused of violating any of the following State or Federal laws, and each Party shall comply with them fastidiously and to the letter:

A. **E-Verify Certification:** At all times during the performance of the Agreement, all parties shall fully comply with Article 2 of Chapter 64 of the General Statutes, and shall ensure compliance by any subcontractors utilized. All parties shall execute an affidavit verifying such compliance upon request by County.

B. **Iran Divestment Act Certification:** All parties executing this Agreement thereby affirm they are not listed on the Final Divestment List created by the State Treasurer pursuant to Article 6A of the Iran Divestment Act, nor shall they utilize any subcontractor in the performance of the Agreement that is identified upon said list.

C. **Divestment from Companies that Boycott Israel:** All parties hereby certify that they are not on the North Carolina State Treasurer's list, prepared pursuant to NCGS 147-86.80 et. seq., of companies engaged in a boycott of Israel, and that they will not utilize in the representation of the County pursuant to this Agreement any firm on said list.

D. **Constitutional Limitation on County Indemnification:** The parties acknowledge and understand that an unlimited indemnification by County constitutes a violation of the North Carolina Constitution, and is void and unenforceable by operation of law. Any indemnifications given by County to any party under the Agreement shall be deemed to be given only to the fullest extent allowed by law.

E. **Constitutional Limitation on Eminent Domain:** All Parties certify and agree that without regard to the provisions of this agreement, neither Party shall deprive the other of property without just compensation, as provided in Amendment V of the United States Constitution.

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SECTION 30 – TERMS & CONDITIONS RIDER

The Department and the County agree to abide by the North Carolina Local Government Contractual Terms and Conditions Rider that is included as EXHIBIT E to this Agreement.

SECTION 31 – SEVERABILITY

The provisions hereof are severable, and should any provision be determined to be invalid, unlawful or otherwise null and void by any court of competent jurisdiction, the other provisions shall remain in full force and effect and shall not thereby be affected unless such ruling shall make further performance hereunder impossible or impose an unconscionable burden upon one of the parties. The parties shall endeavor in good faith to replace any invalid, illegal, or unenforceable provisions with a valid provision, the rights, and obligations of which come as close as practicable to that of the invalid, illegal, or unenforceable provision.

SECTION 32 - DISPUTE RESOLUTION AND FORUM SELECTION

This Agreement shall be governed by and in accordance with the laws of the State of North Carolina without regard to its conflict of laws rules. All actions relating in any way to this Agreement shall be brought in the General Courts of Justice in Davie County, North Carolina. Any mediation of any dispute arising under this agreement shall be conducted in Davie County, North Carolina unless both parties agree on some other location.

The County and the Department recognize, acknowledge and agree that either party's resort to formal legal proceedings may involve substantial commitments of time and resources and may cause unnecessary disruption of the service each party provides to the community; therefore, to the extent that either party contends the other has failed to meet the obligations of this Agreement, the parties agree that they will follow the pattern for dispute resolution set forth hereafter:

A. **Injunctive Relief.** Notwithstanding the provisions of this Section 32, either party may bring an action in a court having jurisdiction in equity for immediate and emergency injunctive relief. Any such action or actions in a court exercising its emergency powers in equity for preliminary or permanent injunctive relief shall be deemed an exception to the requirement that any claim be first submitted to mediation as detailed herein.

B. **Mandatory Pre-filing Mediation.** Except as provided in Subsection 32 A, before either Party initiates a lawsuit, the parties agree to participate in mediation. Mediation shall be conducted within forty-five (45) days (or such other period as is mutually agreeable to the parties) from the time when one party sends written demand to the other. Unless the parties agree otherwise, the Mediator shall be a mutually agreed upon and Certified North Carolina Superior Court Mediator. The mediation shall be conducted in accordance with the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions and in accordance with the rulings of the N. C. Dispute Resolution Commission. Unless otherwise agreed, each Party will bear its expenses in pursuing mediation, and the

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parties will share equally in the fees charged by the Mediator. Any statute of limitations will be tolled for the period from the demand for mediation through the conclusion of the mediation.

C. **Litigation If Mediation Unsuccessful.** In the event that the Parties participate in mediation as provided in Section 32 B, but do not resolve the issues between them in the mediation process, or if a Party violates this agreement by refusing to participate in mediation, either Party may file a lawsuit in the General Court of Justice in Davie County.

SECTION 33 - NOTICES

All notices, reports, records, or other communications which are required or permitted to be given to the parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person; by overnight courier; or by registered or certified mail, postage prepaid, return receipt requested, to the receiving party at the following addresses:

IF TO DAVIE COUNTY:

County Manager
123 South Main Street
Mocksville, NC 27028

IF TO FIRE DEPARTMENT:
Lone Hickory Fire Dept.
3000 Lone Hickory ROAD
Yadkinville NC 27055

SECTION 34 – AMENDMENT/ASSIGNMENT

This Agreement may not be amended except in writing signed by the parties hereto. Except in the case of an Approved Merger as provided in Section 28, this Agreement is not transferable or assignable by either party without the written consent of the other party to this Agreement which shall not be unreasonably withheld.

SECTION 35 - NO WAIVER

Failure of a party to enforce any of the provisions of this Agreement at any time, or to request performance by the other party pursuant to any provision of this Agreement shall in no way be construed as a waiver of any such provision, nor in any way affect the validity of this Agreement, or any part thereof, or the right of the non-enforcing party to enforce each and every provision of this Agreement.

SECTION 36 - MUTUALLY-DRAFTED AGREEMENT

The Department and the County hereby acknowledge that each participated in the negotiation and drafting of this Agreement. Accordingly, the Department and the County agree

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that any rule of construction of contracts allowing for the interpretation of this Agreement to be construed against the drafting party is inapplicable to this Agreement.

SECTION 37 - HEADINGS

The Section headings used herein are for reference and convenience only and shall not enter into or affect the interpretation and enforcement of this Agreement by either party.

SECTION 38 - ENTIRE AGREEMENT; MERGER

The terms and provisions herein contained constitute the entire agreement by and between the County and the Department and shall supersede all previous communications, representations, or agreements, either oral or written, between the parties hereto with respect to the subject matter hereof; except, that this Agreement shall not be construed to supersede any existing and applicable Automatic Mutual Aid Agreements.

SECTION 39 - COUNTERPARTS

This Agreement may be executed in several counterparts, all of which shall constitute one agreement binding on all parties hereto, notwithstanding that all parties have not signed the same counterpart.

SECTION 40 - AUTHORIZATION

Each party warrants that it has the corporate or other organizational power and authority to execute, deliver and perform this Agreement. Each party further warrants that the execution, delivery, and performance by it of the Agreement has been duly authorized and approved by all requisite action of the party's management and appropriate governing body.

IN WITNESS WHEREOF the Department, pursuant to a resolution duly adopted by its Board of Directors, has caused this instrument to be duly executed in its name by the Chairperson/President of its Board of Directors and attested by its Secretary and Chief, and the County has caused this instrument to be duly executed in its name by the County Manager, pursuant to a resolution duly adopted by the County Board of Commissioners, and attested by its Clerk.

This 11 day of May, 2020.

DAVIE COUNTY

DocuSigned by:
EAA3A07191E64E0...
County Manager

ATTEST:

DocuSigned by:
Stacy Moyer
9905D28300B34BA...
by: _____
Clerk to the County Board of Commissioners

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Robin M West

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Lone Hickory FIRE DEPARTMENT

ATTEST:

Secretary, Board of Directors

by: President/Chairperson Board of Directors

Richard P Ranger

Chief of Department

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EXHIBIT "A"
AGREED -UPON PROCEDURE

Three (3) Departments will be selected annually by the County for a review of their 'agreed -upon procedures'. The County will notify the Chief of the selected Departments by November 30th annually.

The Department agrees to provide the CPA who is selected by the County to perform auditing procedures the following information for each fiscal year

1. Detailed trial balance or general ledger of all the bank accounts and details of all withdrawals and deposits including dates and amounts of each transaction for the previous fiscal year. Detailed trial balances or general ledgers should list activity for each account (checks/deposits), date and amount of each transaction. In addition, each account within the detailed report should subtotal to a balance.

2. Bank statements and bank reconciliations for all accounts, including CD's and payroll, for the previous fiscal year. credit card statements (July – June) and receipts for all credit cards used by the unit, if applicable.

3. All invoices and supporting documentation for expenditures, including payroll disbursements, throughout the fiscal year.

4. All deposit slips and supporting documentation for revenues received throughout the fiscal year.

5. All monthly and/or annual financial statements prepared by bookkeepers or other qualified persons, including Balance sheets, income statements, trial balances, and any other year-end report. Reports should be on the last day of the previous fiscal year.

6. Check registers for ALL bank accounts from the previous fiscal year.

7. List of checks (date and amount) written from the County to the unit from the previous fiscal year

8. List of Chief and Board Member names for the Department for the previous year, and whether or not any Board Members are related to one another or the Chief in any of the categories on the following list:

Father/Mother	Father-in-law/Mother-in-law	Nephew/Niece
Son/Daughter	Son-in-law/Daughter-in-law	Grandfather/Grandmother
Brother/Sister	Brother-in-law/Sister-in-law	Grandchild
Husband/Wife	Uncle/Aunt	Others living in the household

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Relationships may be created by marriage (either current or former), birth, adoption, foster care or in loco parentis (in the place of a parent), and include those living in the same household who share a relationship comparable to immediate family members as well as the various combinations of half- and step- relationships that can be derived from such degrees of kinship.

The CPA contracted by the County shall, at a minimum, perform the following analyses with the items collected:

1. Compile a statement of cash receipts and disbursements.

2. Summarize any expenditures that may appear unrelated to fire protection operations.

3. Match the samples to supporting documentation in order to verify the amounts of the disbursements with the bank statement and their account classifications.

4. Track County disbursements to the Fire / Rescue Department to see that the check was deposited into the bank within ten (10) business days of issue.

5. Match disbursements to the Chief and board members with supporting documentation and bank statement.

6. Review board members and treasurer relationship to one another and Fire Chief.

7. Make recommendations to the Board of County Commissioners regarding any improvements that should be considered.

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EXHIBIT "B"
INSURANCE REQUIREMENTS

The Department shall take out and maintain, during the life of this Agreement, the following insurance coverage:

1. Comprehensive Automobile Liability Insurance with combined single limits of at least $1,000,000.00 per occurrence. Coverage shall be provided under a symbol "1". Coverage shall apply, on an excess basis for hired, borrowed and non-owned vehicles. Coverage shall apply, on a primary basis, for commandeered vehicles. Volunteers or employees shall be considered Insured, and volunteers and employees shall have coverage excess of their personal auto liability limits when they are using their vehicles on behalf of their insured department. Fellow members' liability shall be provided. Auto pollution liability shall be included in the coverage.

   Automobile collision and comprehensive coverage for emergency vehicles, other than private passenger vehicles, shall be provided on an agreed value basis. Coverage shall apply to owned and/or leased vehicles. The Department should attempt to set the agreed value at an amount that will replace the vehicle with a new vehicle, built to similar specifications and brought up to current NFPA, DOT or other national specifications. Coverage shall apply, on a primary basis, to hired, borrowed and commandeered vehicles. Coverage will be on an actual cash value basis for the hired, borrowed and commandeered vehicles.

2. Comprehensive General Liability Insurance with limits of at least $1,000,000.00 per occurrence and $3,000,000.00 aggregate. The aggregate shall apply per named insured and per insured location. The policy shall include the following coverage: Volunteers or Employees as Insured, Medical Malpractice, Good Samaritan Liability Coverage, Intentional Acts Coverage for both Bodily Injury or Property Damage, fellow Member Liability, Non-owned Watercraft, Fire Damage Legal Liability with Limits of $1,000,000.00, Pollution Liability arising out of Emergency Operations away from the Department's Premises, Training Activities or Equipment Washdowns.

3. Directors and Officers Liability Insurance with Limits of at least $1,000,000.00 per occurrence with $3,000,000.00 aggregate. This policy shall include coverage for prior acts. The Insured shall include current volunteers and employees, former volunteers and employees and any persons or organizations providing service to the Department under an automatic aid Agreement and mutual assistance contract or similar Agreement.

4. Umbrella Liability Insurance with Limits of at least $ 1,000,000.00 per occurrence and $2,000,000.00 aggregate. The umbrella policy shall provide excess coverage over the Auto Liability Policy, General Liability Policy and the Employer's Liability Section of the Workers Compensation Policy. Volunteers and employees shall be included as Insured.

5. The Department shall maintain Property Insurance protecting against the risk of direct physical loss or damage. The policy covering the building shall be written on a Guaranteed Replacement Cost Basis with coverage included for Building Ordinance, Flood and

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Earthquake. Coverage shall include the replacement cost of Commandeered Property including coverage for Loss of Use. The radios furnished by the County for base units shall be covered. Contents coverage shall be provided on a replacement cost basis. Coinsurance penalties shall not apply.

6. Portable Equipment Coverage shall be provided protecting against the risk of direct physical loss or damage, including electrical surges. The radios provided by the County for use as mobile units shall be covered. Coverage shall be provided on a Guaranteed Replacement Cost Basis.

7. The Automobile Liability Policy, General Liability Policy, Umbrella Liability Policy and Management Liability Policy shall name the County of Davie as an additional insured. The Department shall furnish the County of Davie with certificates of insurance showing the type of policy, limits of liability, the name of insurance companies, policy numbers, effective dates and expiration dates of policies.

8. The Department shall obtain a Fidelity Bond for at least one and one-half times the department's annual budget that covers anyone within the Department that handles the funds of the Department.

9. Worker's Compensation - Coverage for all paid and volunteer emergency workers for statutory limits in compliance with all applicable State and Federal laws.

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EXHIBIT "C"
FIRE DISTRICT

The Department's fire response district is the area delineated as the response district for the Department on the attached Map as adopted by the Davie County Board of County Commissions on the 21st day of April, 2020 and approved by the North Carolina Department of Insurance.

Add Map of Fire District

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EXHIBIT D

Items Purchased by County or with County Funds

1. 800 Radios inventoried and listed held by the Davie County Fire Marshal
2.
3.
4.
5.
6.
7.
8.
9.
10.

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EXHIBIT E

STANDARD NORTH CAROLINA LOCAL GOVERNMENT CONTRACTUAL TERMS & CONDITIONS RIDER
(the **"LGR"**) Effective: August 6, 2018

THIS LGR is hereby made and entered into by and between DAVIE COUNTY (the "**County**") and any and all parties entering into any contract, memorandum of understanding, or other agreement of any kind, for the provision of goods, services, or other consideration of any kind, to the County referencing its existence or inclusion as a part thereof.

Any such instrument(s) together with any and all exhibits, addenda, riders and/or any other instruments attached to, or incorporated by reference therein, shall be collectively referred to hereinafter as the "**Contract**".

WITNESSETH:

WHEREAS, County is a body politic of the State of North Carolina, subject by operation of law to certain additional rules, regulations, and laws applicable to public and/or governmental bodies including without limitation certain operational and contractual requirements; and

WHEREAS, the risk of financial default under a contract entered into by such a governmental body is substantially lower than the ordinary risk of financial default attributable to private or commercial entities; and

WHEREAS, County has established this LGR for the non-exclusive purposes of expediting its contract review and approval process, to document notice of its governmental status, and to protect its citizens and the public at large from illegal or unfair obligations otherwise imposed under certain adhesion contracts; and

WHEREAS, County is prohibited by applicable law from executing the Contract without modification by this LGR, or has otherwise determined it is not in the best interests of its citizens and the public at large to do so without the additional terms and conditions of this LGR being made a part thereof.

NOW THEREFORE, in exchange of the mutual covenants made herein, and for other good and valuable consideration exchanged between the parties, the sufficiency of which is hereby acknowledged, including but not limited to the inducement of County to enter into the Contract as modified by this LGR, the parties agree as follows:

PART A: AMENDED CONTRACT TERMS:

1. Contract Incorporation: The terms and provisions of this LGR shall be deemed fully and completely incorporated into, agreed to and accepted by, all parties entering into any contract which references their existence in any way; including to the fullest extent permitted by law, incomplete or non-specific references to their existence where any party could with reasonable due diligence have ascertained the existence and content of its terms. Each party entering into any such Contract further agrees that the incorporation of this LGR into the terms and conditions of the Contract shall be deemed to be a material condition precedent to County's acceptance of such Contract, and to the validity and enforceability of said Contract against County by any party thereto. Partial performance by any party under such a Contract without formal execution

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thereof, shall be considered as agreement to, and acceptance of, these LGR terms and conditions.

2. Contractual Conflict & Precedence: Notwithstanding any statement or provision within the contract to the contrary, and except for any "*Additional Terms & Conditions*" agreed to between the parties pursuant to the immediately following paragraph, the terms and conditions of this LGR shall supersede, control over, and prevail in the event of any conflict with any differing or contrary terms or conditions of the contract. Except to the extent they are inconsistent with or modified by this LGR, the terms and conditions of the contract shall remain in full force and effect.

3. Additional Terms & Conditions: To the extent the parties require any additional or specific modifications or amendments to the Contract, or to this LGR itself, the same shall be reduced in writing and attached to the Contract labeled as "*Additional Terms & Conditions*" which shall clearly reference the Contract to which it applies, shall state that it takes precedence over, and shall control in the event of any conflicts with, both the Contract and any Local Government Rider", and shall be separately signed by all parties concurrently with their execution of the Contract instrument(s).

PART B: STANDARD LOCAL GOVERNMENT PROVISIONS:

1. Public Records & Confidentiality: County is required to comply with certain applicable statutes of the State of North Carolina regarding open meetings and/or open records. Notwithstanding anything to the contrary within the Contract, County shall not be liable to any party for disclosing the Contract, or any documents or communications made or received in relation thereto, to any third party or the public at large, if such disclosure is made by County in a good faith effort within its sole discretion, to comply with any public records request or other applicable laws.

2. Limitation on Contractual Authority: Only the County Board of Commissioners, the County Manager, or another agent specifically designated in writing by either to exercise their respective authority related to the Contract shall be authorized to enter into, modify, or otherwise bind the County to the Contract in any way. Any such action shall be taken only by the signed written consent thereof, and no party shall rely upon any verbal communications, or otherwise upon the authority of any other agent of the County in lieu thereof. This provision shall apply to prevent any inadvertent or passive modifications to the terms of the Contract through communications between the parties as may otherwise be allowed by law, including but not limited to any such provisions of the North Carolina Uniform Commercial Code, if applicable.

3. Limitation Upon Partial/Progress Payments for Goods/Materials to be Delivered: Payment (partial or otherwise) for any physical goods or materials to be provided to the County pursuant to the Contract, shall not be due or owed by the County until after actual delivery and acceptance of any such physical items.

4. E-Verify Certification: At all times during performance of the Contract, all parties shall fully comply with Article 2 of Chapter 64 of the General Statutes, and shall ensure compliance by any subcontractors utilized. All parties shall execute an affidavit verifying such compliance upon request by County.

5. Iran Divestment Act Certification: All parties executing this Contract thereby affirm they are not listed on the Final Divestment List created by the State Treasurer pursuant to Article 6A of the Iran Divestment Act, nor shall they utilize any subcontractor in the performance of the

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Contract that is identified upon said list.

6. Divestment from Companies that Boycott Israel: All parties hereby certify that they are not on the North Carolina State Treasurer's list, prepared pursuant to NCGS 147-86.80 et. seq., of companies engaged in a boycott of Israel, and that they will not utilize in the representation of the County pursuant to this Contract any firm on said list.

7. Constitutional Limitation on County Indemnification: The parties acknowledge and understand that an unlimited indemnification by County constitutes a violation of the North Carolina Constitution, and is void and unenforceable by operation of law. Any indemnifications given by County to any party under the Contract shall be deemed to be given only to the fullest extent allowed by law.

8. Contingent Funding/Non-Appropriations Clause: Notwithstanding anything to the contrary within the Contract or this LGR, all financial obligations of the County under the Contract are dependent upon, and subject to, the continuing allocation of funds by the County Board of Commissioners for such purpose. The Contract shall automatically terminate if such funds cease to be allocated or available for any reason.

9. Not to Exceed (NTE) Cap: Unless otherwise approved in writing by County, the total amount of compensation payable by County to all parties under the Contract during each fiscal year of County (running from July 1 to June 30 of the following calendar year) shall not exceed the amount, if any, which is specifically listed within the Contract as "**Total annual compensation hereunder Not to Exceed $** 5,744.00 **without County Manager's prior written approval**". This amount is the total combined budget normally allocated for the services rendered under the Contract, and may be increased unilaterally by County from time to time, only through the written approval of the County Manager which may be given via email.

10. Pre-audit & Purchasing Policy Notices: Per NCGS § 159-28 no contract with a local government including County requiring the payment of any public funds is valid unless properly pre-audited in the manner required by said statute. The Contract must contain a Pre-audit Certificate signed by the County Finance Officer or their Deputy which shall take the substantially the following form "This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act." Failure to obtain a pre-audit upon the Contract makes the contract invalid and unenforceable per state law. Additionally, pursuant to County purchasing policies, no obligation of $500 or more for any goods sold or services rendered to County is validly enforceable without a valid signed contract, or a signed Purchase Order for such goods or services. Contact the County Finance Office at 336-753-6022 with any questions or for further information related to this provision.

PART C: OTHER GENERAL PROVISIONS

Notwithstanding anything within the Contract to the contrary:

1. Choice of Law, Forum, & Pre-Litigation Mediation: This Contract is made and entered into in Davie County, North Carolina and shall be governed by and construed in accordance with North Carolina law. Any claim for breach or enforcement of this Contract shall be filed in the appropriate court located in the jurisdiction of Davie County, North Carolina. The parties agree in good faith to first submit any disputes to that formal process known as mediation being that process which is described by North Carolina in its Alternative Dispute Resolution Program through the Dispute Resolution Commission. The parties agree that they will attempt to agree on

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a North Carolina Certified Superior Court Mediator with the understanding that this list is maintained by the North Carolina Dispute Resolution Commission. Should the parties be unable to agree, then that mediator who is next to be assigned on a case by Court Administration in Davie County will be used as the mediator. The parties shall share the costs of mediation equally and the parties agree to mediate in good faith.

2. Construction & Headings: No rule of construction shall apply against any party as the drafter of the Contract which is the result of an arms-length negotiation between the parties. The titles/captions/headings of any and all portions of the Contract are intended for reference purposes only, and shall not be deemed to affect the meaning or interpretation of the Contract terms and conditions.

3. Merger: The Contract is the entire agreement between the parties with respect to the foregoing matter and there are no other verbal or written agreements with respect thereto between the parties which have not been reduced to writing and specifically incorporated into the Contract.

4. Modification: No modifications of the Contract shall be valid unless reduced to writing signed by all parties hereto.

5. Severability: The provisions of this Contract are intended to be severable. Any and all provisions of this Contract that are prohibited, unenforceable, or otherwise not authorized in any jurisdiction shall, as to such portion and/or jurisdiction only, be deemed ineffective to the extent of such prohibition, unenforceability, or non-authorization, without invalidating the remaining provision(s) hereof in such jurisdiction, or affecting the continuing validity, enforceability, or legality hereof in any other jurisdiction.

6. Signature Warranty: Any party executing the Contract as a corporate or other legal entity represents to the other parties hereto that such entity is duly organized, validly existing, and in good standing under the laws of the State of North Carolina or otherwise under the laws of the State of its formation, and is qualified to transact the business contemplated herein within the State of North Carolina, and further that any such party executing the Contract on behalf thereof, has the full power and authority to do so without any further authorization being required from any party, and thereby legally binds said entity to the terms and conditions of this Contract.

7. Additional Limitation of Scope of County Indemnification: If applicable, any indemnification given by County shall be deemed and further limited to indemnify against claims or actions arising from the action or inaction of County's own officers, officials, employees or agents only; and shall not be deemed to indemnify any party against claims or actions arising from any action or inaction of any other parties.

8. Waiver of Consequential/Punitive Damages: Under no circumstances whatsoever, shall any party be entitled to recover, and all parties hereby waive their right to seek, any indirect, punitive, special or consequential damages of any kind whatsoever, incurred in connection with any breach of the Contract. Notwithstanding the foregoing, the reasonable costs incurred in connection with successfully enforcing the Contract against another party, including court costs, fees, and reasonable attorneys' fees associated therewith shall be recoverable by such a prevailing party.
9. Savings Provision: County shall not be held in default of the Contract or otherwise deemed in breach thereof, unless it has first failed to cure any condition causing such default within thirty days (30) days written notice thereof by the party alleging such default. If County cures any

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default within that period, no breach of the Contract shall be deemed to have occurred.

10. Electronic and/or Duplicate Execution & Order of Execution: The Contract may be executed in multiple counterparts, in which event each executed copy shall be deemed an original document as between the parties. An electronic signature and/or copy of the Contract shall have the same force and affect as the original. Due to the need to comply with statutory auditing requirements, all parties contracting with County shall execute the Contract first and deliver a fully signed copy thereof (preferably via electronic form) to the County for its counter-execution and delivery of a fully signed copy to all parties

Accepted: Robt Wise 4-21-20

Lone Hickory Fire Department

Davie County
By: DocuSigned by: EAA3A07191E64E0...