

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

THIS AGREEMENT, made and entered into this the day of

by and between WAKE COUNTY, hereinafter referred to as the "County",

and the hereinafter referred to as the "Town";

RECITALS:

A. WHEREAS, North Carolina General Statutes §69-25.5 provides that the board of county commissioners may provide for fire protection in a fire protection district by contracting with any incorporated city or town; and

B. WHEREAS, North Carolina General Statutes §153A-233 additionally provides that a county may contract for fire-fighting or prevention services with counties, cities, or other units of local government, and may for these purposes appropriate funds not otherwise limited as to use by law;

C. WHEREAS, the Town agrees to contract with Wake County to provide fire protection services; and

D. WHEREAS, North Carolina General Statutes §159-13 *et seq.* provides that the county budget ordinance may be in any form that the Board of County Commissioners of any County deems most efficient in enabling it to make the fiscal policy decision embodied therein and provides for a fund for each special district whose taxes are collected by the county; and

E. WHEREAS, the Town is a municipal corporation authorized to establish, organize, equip, maintain, and furnish fire protection services and other services authorized by its charter to the citizens of its district pursuant to N.C.G.S. 160A-291; and

F. WHEREAS, the _____ Fire Insurance and Response District(s) of Wake

County have boundaries defined by the most current description on file maintained by the Wake County Geographic Information Services in the Department of Fire and Emergency Management Office; and

G. WHEREAS, the Town has secured equipment, land and buildings for the operation of Fire Station(s); and

H. WHEREAS, Wake County presently levies and collects a special tax and is responsible for appropriating the funds derived therefrom for fire protection in Wake County; and

I. WHEREAS, the County and Town desire to enter into this Agreement for the Town to furnish fire protection for and within the Fire Insurance and _____ Response District.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable considerations, the receipt of which is hereby acknowledged, the parties hereto contract and agree as follows:

SECTION 1. USE AND AMOUNT OF SERVICE TAX LEVIED

The Wake County Board of County Commissioners shall levy and collect a tax each year on all taxable property within the ____ Fire Protection District. The amount of such service tax levy shall be determined by the Board of the County Commissioners from year to year and maintained by the County in a special fund as provided by law and more specifically set out in Section 2 hereunder. Out of this fund, Wake County shall, to the extent of the taxes collected hereunder, provide fire protection for the district by making funds, equipment, facilities and/or

personnel for fire protection available to the _____ Town. In accordance with

N.C.G.S. Section 69-25.4, "fire protection" and the levy of a tax for that purpose may include the levy, appropriation, and expenditure of funds for furnishing emergency medical, rescue, and ambulance services to protect persons within the district from injury or death. For each fiscal year, the funds provided to the Town from the special fire district tax fund shall be based on the fire protection and emergency services needs projected in the budget request jointly submitted by the Town and the County staff to the County Commissioners and as approved

by and deemed necessary by the County Commissioners for furnishing fire protection and emergency services within the District.

Special fire district tax funds levied and collected by the County and paid to the Town by the County shall be used solely for fire department operations,

fire protection and emergency services in the Fire Insurance and

Response Districts and other areas of response as dispatched and to meet the standards established by this Agreement.

SECTION 2. ACCOUNT MAINTAINED FOR RECEIPTS FROM SERVICE TAX

A separate account shall be maintained by the County for the receipts from the special tax levied for the service tax district. Out of this account:

2.1. The County shall be paid for fire protection services provided in the unincorporated areas of the County: Forestry, Fire Training, Communications including Wake Emergency Communications Organization, computer aided dispatch and 800 MHZ radio system, and hazardous materials response; provided that prior to and as a condition of payment, the County has submitted such funding request to the Fire Commission in a line item budget format for the Fire Commission's review and recommendation. In order to facilitate the Town's preparation of its budget recommendation, the County agrees to provide a copy of its line item budget request for payment of these fees to the Town in accordance with the Fire Commission's annual budget calendar.

2.2 The County will pay the approved total appropriations for the Town in equal monthly payments to said Town on the last day of each month, provided that prior to and as a condition of payment, the Town has submitted such funding request to the Fire Commission in a line item budget format for the Fire Commission's review and recommendation, and the County's Board of Commissioners has reviewed and approved said funding request.

SECTION 3. SERVICE TAX REVENUES IN EXCESS OF APPROPRIATIONS

Any fire protection service tax district revenues collected annually in excess of the approved total appropriations and retained County fees shall be maintained in the separate account established by the County. The Wake County Fire Commission shall make recommendations to the County for distribution of these revenues, which shall be used only for furnishing fire protection within that district. The Wake County Board of Commissioners will issue final approval of distribution and such distribution shall occur.

SECTION 4. SERVICES FURNISHED BY COUNTY

The County shall furnish the following services to the contracting Town for the term of this Agreement: 1) such vaccinations as are deemed necessary for all full time, part time and volunteer members of the Fire Department by the County's medical director and fire protection needs analysis in order to maintain such fire protection throughout the County. 2) as requested, fire investigation and emergency scene assistance services.

SECTION 5. SERVICES FURNISHED BY TOWN

The Town will furnish fire protection and other emergency services as determined and approved by the Town's governing body and as contracted for by the County Board of Commissioners within the District and shall provide the necessary equipment, personnel and those things necessary for furnishing such protection in the District. The services shall be in accordance with minimum standards set forth in this Agreement and all future amendments adopted in accordance with Section 27 of this Agreement. The Town shall furnish said fire protection without charge to all persons and property located in the District in an efficient and workmanlike manner. This provision shall not prohibit the Town from entering into contracts with the Federal, State or local governments, or utility companies for the provision of fire protection services exceeding the scope of this Agreement for a fee. This provision shall not prohibit the Town from billing for certain services, including but not limited to inspection services, false alarm responses, and hazardous materials mitigation responses, based on a fee schedule or other cost recovery program, provided that such fee schedule has been approved by the Town's governing body.

SECTION 6. BOOKS AND RECORDS

The County may inspect the financial books and records of the Town at reasonable times during regular business hours of the County. The Town agrees that it will supply such financial books, records, and information or verification as may be reasonably requested by the County. The Town shall maintain a written accounting system which provides adequate documentation of all of its receipts and disbursements including, but not limited to, those related to the expenditure of funds subject to this Agreement.

SECTION 7. QUARTERLY REPORT

[THIS SECTION INTENTIONALLY LEFT BLANK AS IT DOES NOT APPLY TO MUNICIPAL FIRE DEPARTMENTS]

SECTION 8. ANNUAL AUDIT

The Town shall provide to the County an annual audit and accompanying management letter prepared in accordance with generally accepted accounting principles and generally accepted auditing standards for the preceding fiscal year as soon as the Town's audit is completed by the town's auditor, according to the legally established deadlines for municipalities.

In the event that the audit or management letter reveals any reportable and/or material issue(s) related to Town fire operations with regard to compliance with generally accepted accounting principles, the Town shall provide a written statement to the County that contains an explanation of each such issue and an action plan (with implementation timetable) for resolving each such issue, and shall provide periodic reports to the County on progress made in resolution of each issue.

Should the Town fail to submit its audit report to the County within the above time period, the County may suspend all funds immediately until the audit is delivered as set forth above, except that the County's Director of Finance may grant a reasonable submittal extension if the Town is unable to deliver the audit for reasons beyond the control of the Town.

SECTION 9. DECISION MAKING PROCESS OPEN TO PUBLIC

The Town acknowledges that it is a public body subject to the provisions of N.C.G.S. Chapter 143, Article 33C and agrees to comply with all provisions of said statute in conducting any decision making process required by the terms of this Agreement.

SECTION 10. NON-COMPLIANCE BY TOWN

If the County has a reasonable belief that the Town has violated any provision of this Agreement, the County will provide the Town written notice of the possible noncompliance and initiate an audit to verify compliance. If the County determines that the Town has failed to render the fire protection and services as provided in this Agreement or has otherwise operated in a manner that violates the provisions of this Agreement, then the County shall give the Town ninety (90) days advance written notice that the funds allocated are subject to suspension and shall additionally provide a list of the improvements needed for compliance. If during the said ninety (90) day period, the Town makes improvements satisfactory to the County, no suspension shall occur. During the ninety (90) day period, the Town is not relieved of their responsibility to provide fire protection and emergency services in a manner otherwise consistent with the terms of this Agreement. If after the ninety (90) period, the Town has failed to make satisfactory improvements to comply with this Agreement, then the County

may suspend any or all of the monthly payment of funds allocated to the Town pursuant to Section 2 herein.

SECTION 11. AUTHORITY TO MAINTAIN DELIVERY OF SERVICES

In the event that the Town's governing body determines that the Town is unable to reliably deliver the services described herein, for reasons including, but not limited to, resignation or withdrawal of volunteer, part-time or full-time members or other withdrawal or loss of ability to deliver services, the Town shall immediately so notify the County, at which time the Town authorizes the County or its agents to suspend the monthly payments to the Town and to use such Town facilities and equipment as are necessary to maintain the delivery of fire services in the Town's primary service area (to the extent the Town exercises operational control and/or ownership interest over such facilities and equipment), so that an interruption of the Town's ability to deliver fire services will not interfere with the standards of fire protection service provided for in this Agreement.

Should such use become necessary, upon the request of the Town, the County and the Town's governing body will jointly select an independent third-party trustee who will regularly evaluate the County's use of such Town facilities, equipment and resources on behalf of the Town. During the time that the Town is unable to provide services, the governing body of the Town shall cooperate with the Fire Commission. The Fire Commission shall determine if the Town is able to resume delivery of reliable service.

SECTION 12. FINANCIAL MANAGEMENT

[THIS SECTION REPLACES AND SUPERCEDES SECTION 12 "FINANCIAL MISMANAGEMENT"]

The Town acknowledges that it is a local government subject to the provisions of N.C.G.S. Chapter 159, Article 3, "The Local Government and Fiscal Control Act" and agrees to comply and conform with all provisions of said statute in conducting any budget and financial activities required by the terms of this Agreement.

SECTION 13. COMPOSITION OF BOARD OF DIRECTORS

[THIS SECTION INTENTIONALLY LEFT BLANK AS IT DOES NOT APPLY TO MUNICIPAL FIRE DEPARTMENTS]

SECTION 14. LIQUIDATION OR DISSOLUTION

In the event of liquidation or dissolution of the Town's Fire Operations, the Town's inability to provide fire protection services to the District, or the

termination of this Agreement, all assets and equipment that have been acquired using County funds shall be returned to the County.

14.1 Real property owned by the Town that was acquired using partial County funding shall either be sold, and the proceeds distributed between the Town and County based upon the original funding Agreement, or the Town shall pay the County an amount equal to their share (based upon the proportions of the original funding Agreement) of the fair market value of the property, which shall in no event be less than the tax value of the property.

SECTION 15. MERGER

In the event of a merger between the Town and another entity, all assets purchased by the Town prior to the establishment of the Fire Protection Service Tax District will remain the property of the Town; and all assets purchased by the Town after the establishment of the Fire Protection Service Tax District will be distributed in accordance with Section 14 herein.

SECTION 16. TOWN'S USE OF FUNDS

The Town shall use the funds subject to this Agreement in accordance with the annual Department Budget. This budget may be amended by the Town within the approved total appropriations made available by this Agreement, provided that all appropriations must be used for furnishing fire protection within said district, and amendments providing for any expenditure that establishes a new operating expense that will extend beyond the current fiscal year shall conform with the requirements of N.C.G.S. Chapter 159, Article 3 "The Local Government Budget and Fiscal Control Act and the requirements of N.C.G.S. Chapter 143, Article 3 "Purchases and Contracts", which apply to the Town as a local unit of government. .

SECTION 17. FIRE DEPARTMENT'S BUDGET PREPARATION

As part of every annual budget submission, the Town is required to identify the name and rank of each paid employee that leaves employment with the Town's Fire Department and the name and rank of each new hire employee of the Town's Fire Department.

SECTION 18. INSURANCE AND INDEMNIFICATION

The Town shall obtain and keep in force during the term of this Agreement and any subsequent renewals of this Agreement the following minimum insurance coverage, annually providing the County Risk Manager with a certificate of insurance. All required insurance shall be procured from insurance companies licensed to do business in North Carolina with a Best's Insurance

Guide Rating of no less than A- and a financial size category of no less than Class VII; or the Volunteer Safety Workers' Compensation Fund owned and operated by the State of North Carolina. Coverage shall be maintained continuously during the term of this agreement. The Town shall be responsible for purchasing such insurance coverage for both regular employees and volunteers.

- A. Worker's Compensation: Coverage A – Statutory – State of North Carolina. Coverage B – Employers Liability - \$100,000 each claim.
- B. Comprehensive General Liability, Including Medical Malpractice and Errors and Omissions: Coverage with minimum limits of \$1,000,000.00 per occurrence combined single limit for bodily injury liability and property damage liability.
- C. Business Auto Policy: Coverage with minimum limits of \$1,000,000.00 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.
- D. Management Liability/Directors and Officers Liability: Coverage with minimum limits of \$1,000,000.00 per claim and \$2,000,000.00 aggregate.
- E. Umbrella Liability: Coverage with limits of \$2,000,000.00. Coverage shall excess the underlying auto liability, employers liability, general liability including Medical Malpractice and Errors and Omissions liability. There shall not be any "drop down deductibles" in areas where underlying coverage is not required but the Umbrella Policy provides coverage.
- F. Fidelity Bonds: A blanket fidelity bond shall be purchased in the amount of not less than \$100,000.00.
- G. Wake County shall be named as an additional insured under the Comprehensive General Liability policy, including Medical Malpractice and Errors and Omissions, Business Auto Policy, Management Liability/Directors and Officers Liability, Umbrella Coverage, and any other policy covering property owned by Wake County or where Wake County has funds at risk. Any policy insuring a vehicle owned by Wake County shall name Wake County as an Additional Insured Lessor and as a Loss Payee.

The Town shall indemnify and save harmless Wake County from any and all liability and expenses including attorneys fees, court costs, and other costs incurred by Wake County which are caused by the negligence or willful misconduct of the Town, its agents, or employees, up to the limits of insurance specified herein; provided that such liability arises out of acts for which any defense of governmental, statutory, or common law immunity is not available. The indemnification provided for herein shall not be construed as a waiver of any applicable defense of governmental, statutory, or common law immunity, and shall not prevent the Town 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.

SECTION 19. INSURANCE SERVICES OFFICE, INC. RATING

The Town shall make a good faith effort to maintain its current rating, or better, with the North Carolina Department of Insurance, and Insurance Services Office, Inc. The Town shall continuously comply with all applicable laws, ordinances and regulations. Cases in which a Town's fire operation loses or receives a reduced rating will be examined by the Wake County Department of Fire and Emergency Management. The Wake County Director of Fire and Emergency Management shall make a report to the Wake County Fire Commission containing recommendations for corrective action.

In the event that the ISO rating of the Town's fire operation falls below a Class 6 public protection classification for fire insurance grading purposes, the Town shall prepare and submit to the County a plan to obtain a minimum of a Class 6 public protection classification, such classification to be in effect no later than July 1, 2011. If the Town has a public protection classification equal to or better than a Class 6, the Town is not required to downgrade to a Class 6.

The Town agrees to implement said plan after its completion subject to availability of funds as recommended by the Fire Commission and approved by the Town's Board of Commissioners.

SECTION 20. STANDARDS OF PERFORMANCE.

The Town shall furnish fire protection and emergency services in a professional, efficient and workmanlike manner, in particular so as to meet the requirements of and comply with rules and regulations of the North Carolina Department of Insurance, Insurance Services Office, Inc., Article 11, Chapter 153A of the North Carolina General Statutes, Article 14, Chapter 160A of the North Carolina General Statutes, and any other pertinent federal, state and county law, regulation and standards. The Town agrees to participate jointly with the County in development and implementation of countywide fire service system performance standards through the Fire Commission including (but not limited to) staffing, turnout time, response time, fire and emergency-event outcomes, customer satisfaction and dissatisfaction, documentation consistency and compliance with standard operating procedures.

The following minimal performance standards are agreed to by the County and the Town and are a part of this contract:

A. RESPONSE TIME: When one minute elapses after dispatch of the Fire Department with no response, the Town will be re-paged. After an additional two minutes (three minutes total) have elapsed, the next closest fire department will be dispatched.

B. STAFFING ON SCENE: The Town shall have an adopted standard operating guideline that addresses the appropriate number of firefighters needed on all type fire calls. A current, valid copy of the Town's guideline shall be kept on file with the Wake County Department of Fire and Emergency Management.

C. AUTOMATIC AID AGREEMENTS: Each Town shall provide automatic aid service for all structure fire calls as agreed upon with the neighboring fire departments and approved by the County and neighboring Wake County Fire Department.

D. MUTUAL AID AGREEMENTS: The Town shall cooperate and participate in the most current Wake County Mutual Aid system plan. The Wake County Emergency Communication Center will automatically dispatch the nearest mutual aid department after failure in three (3) minutes of the initially dispatched department to acknowledge the call. This shall apply to all calls. Wake County will supply the Town with a copy of the officially adopted mutual aid system plan. The agreement can be found as Appendix A of this contract.

E. TRAINING: The Town shall have an adopted guideline that addresses appropriate initial training of firefighters and continuing education of firefighters that meets or exceeds all state requirements. The initial training shall include at a minimum: Hazardous materials responder – operations plus, incident command system and blood borne pathogens. A current, valid copy of the Town training guidelines shall be kept on file with the Wake County Department of Fire and Emergency Management. The Fire Department agrees to the following minimum training standards:

- Conduct a minimum of one (1) live fire training exercise annually.
- Participate in a minimum of (1) each multi-company and multi-department training exercise.
- No member shall engage in structural firefighting without having first completed the Essentials of Firefighting course, or equivalent course as determined by the Department's chief officer.
- The Town shall conduct a regional post incident review for the following incidents: fatal fires, fires involving more than \$250,000 property loss, fires involving civilian injury requiring hospitalization for more than 23 hours, fires involving firefighter injury requiring hospitalization for more than 23 hours, and any other incident as determined by the Department. Post incident reviews will be facilitated by a fire service member that has completed a post-incident review training program approved by the Fire Commission, or equivalent training as determined by the Fire Commission.

F. DEPRECIATION: Each Fire Department shall have a depreciation schedule for equipment and property valued over \$25,000.00.

G. FIRE STATION CONSTRUCTION/RENOVATION: The Wake County Fire Commission shall make recommendations on new fire station locations and major renovations to the Wake County Board of Commissioners. The Wake County Board of Commissioners shall approve all new fire stations and major renovations financed utilizing service tax district funds. Major renovations include renovations of existing fire stations, which exceed \$100,000.00 in total cost.

H.FUND BALANCE: [THIS SECTION INTENTIONALLY LEFT BLANK AS IT DOES NOT APPLY TO MUNICIPAL FIRE DEPARTMENTS]

I. FIXED ASSETS: [THIS SECTION INTENTIONALLY LEFT BLANK AS IT DOES NOT APPLY TO MUNICIPAL FIRE DEPARTMENTS]

J. PUBLIC FIRE EDUCATION: The Town shall develop a plan for providing public fire education for: 1) Children; 2) Businesses; and 3) Homes within each fire district. The Town's plan shall be revised annually and submitted to the Wake County Department of Fire and Emergency Management, for review, at the beginning of each County fiscal year (July). The town shall support public fire education programs through assistance of materials, equipment and personnel from the Wake County Department of Fire and Emergency Management.

K. PRE-FIRE INCIDENT SURVEYS: The Town shall have the goal of developing pre-fire incident surveys and updating them annually for all commercial buildings within the fire district. Facilities, which should be given priority, are those buildings displaying NFPA 704 placards, hazardous, institutionalized and assembly occupancies. The Town shall work with local fire code enforcement officials to determine hazards and occupancies. Upon request, the Wake County Department of Fire and Emergency Management staff shall assist the Town in developing pre-fire incident surveys for buildings within Wake County Department of Fire and Emergency Management's fire code enforcement service area.

L. FIRE INVESTIGATIONS: The Town officer in charge at all fire scenes shall attempt to determine the origin and cause of every fire. When the officer in charge cannot determine the origin and cause OR if the cause is suspected to be incendiary in nature, the officer in charge shall request a representative from the Wake County Department of Public Safety to assist. The Town shall provide whatever assistance is needed by Wake County staff at the fire scene. At the conclusion of the fire origin and cause determination, Wake County staff will provide a report to the Town regarding its investigation as to the cause of the fire.

M. FIRE HYDRANTS: Each Town shall have an adopted guideline that addresses fire hydrant testing and maintenance. A current valid copy of the

Fire Department guideline shall be kept on file with Wake County Department of Fire and Emergency Management. The Town shall ensure that every wet and dry fire hydrant in the suburban fire district is flushed and checked for accessibility, functionality, visibility, and operation at least once annually. Records of fire hydrant tests and maintenance conducted by the Town shall be available for review by the Wake County Department of Fire and Emergency Management during reasonable business hours.

N. MEDICAL FIRST RESPONDER: Each Town shall participate in the Wake County Medical First Responder Program. Each Town shall conform to the Wake County Medical First Responder policies and procedures and direction of the Wake County Medical Director and Emergency Medical Services Director. Each Town shall have an adopted guideline that addresses the Medical First Responder Program and Operation.

O. EMERGENCY DISASTER RESPONSE: Each Town shall follow the Wake County Incident Command Master Plan and all applicable appendices.

P. DISPOSING OF EQUIPMENT: For any equipment acquired wholly or partially with county funding which the town has deemed necessary to sell , the Town shall, to the extent permitted by North Carolina surplus property laws, offer such equipment for sale to other Fire Departments in Wake County prior to offering to outside agencies.

Q. PERSONNEL: The Town represents to the County that it has personnel rules for compensated and volunteer members that are not substantially and materially different from, or inconsistent with model rules developed through the Fire Commission, and personnel rules for volunteer members that are not substantially and materially different from, or inconsistent with model rules developed through the Fire Commission within 30 (thirty) days of Fire Commission approval of such model rules.

R. EMPLOYMENT: [THIS SECTION INTENTIONALLY LEFT BLANK AS IT DOES NOT APPLY TO MUNICIPAL FIRE DEPARTMENTS]

S. DRIVER'S LICENSE CHECK: [THIS SECTION INTENTIONALLY LEFT BLANK AS IT DOES NOT APPLY TO MUNICIPAL FIRE DEPARTMENTS]

T. ADMINISTRATIVE AND OPERATIONAL PROCEDURES: [THIS SECTION INTENTIONALLY LEFT BLANK AS IT DOES NOT APPLY TO MUNICIPAL FIRE DEPARTMENTS]

U. AUXILIARY SERVICES: The Town may choose to participate in Wake County Auxiliary Services Programs. Participation is voluntary. However, each Town or Fire Department that participates in the programs shall conform to the Wake County policies and procedures and direction of the Wake County

Director of Fire and Emergency Management. Any Town or Fire Department choosing to participate in these programs shall have adopted guidelines that address the appropriate functions. If the Town chooses to participate in any of these programs, the agreements can be found as Appendices to this contract:

Mutual Aid	C
First Responder Agreement	D
Special Services	E
Extrication Services	F
Water Rescue Services	G
Specialized Rescue Services	H
Specialized Fire Equipment Services	I
Technician Level Hazardous Materials Services	J
Fire Protection Personnel Program	K
FEMA Disaster Services	L
Individual Contract Amendments	M

V. FIRE SERVICE COMPENSATION GUIDELINES: The County and Town agree to abide by the requirements contained in the Fire Service Compensation Guidelines.

W. EMERGENCY ALERTING: The Town agrees to rely only on the countywide alphanumeric and tone/voice paging systems for emergency alerting and response purposes.

SECTION 21. RELATIONSHIP OF PARTIES

The County and the Town agree that the Town 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 Town's acts or omissions.

SECTION 22. TERM OF AGREEMENT

This agreement shall become effective as of _____, subject to the continued legal existence of the District(s) and the Town, and shall continue for a

term of ten years, automatically renewing from fiscal year to fiscal year unless terminated by either party in accordance with Section 24 of this agreement.

SECTION 23. NON-ASSIGNABILITY

This agreement may not be transferred, assigned, or subcontracted by the Town without the written consent of the County.

SECTION 24. TERMINATION

This Contract may be terminated by either party upon advance written notice to the other party, served upon the other party by certified mail at least ninety (90) days prior to termination. Failure of the County and the Town to agree upon the amount of funding shall be a ground to terminate this contract in accordance with this section of the Agreement.

SECTION 25. RESERVATION OF RIGHTS

Wake County reserves the right to provide the highest level of fire protection and emergency services possible, subject to the availability of funding.

SECTION 26. NO WAIVER

Failure of the County to enforce any of the provisions of this Agreement at any time, or to request performance by the Town pursuant to any of the provisions of this Agreement at any time shall in no way be construed as a waiver of such provisions, nor in any way affect the validity of this Agreement, or any part thereof, or the right of the County to enforce each and every provision. In the event that there is disagreement between representatives of the County Department of Fire and Emergency Management and the Town as to the meaning and/or applicability of any section of the Agreement, the County and the Town agree to select and share the cost (if any) of the services of a trained community mediator to mediate the disagreement prior to resorting to legal process.

SECTION 27. AMENDMENTS

It is recognized and agreed to by the County and the Town that specific amendments may be necessary on an individual department-by-department basis. Any amendment to this Agreement shall be made in writing and signed by both parties in order to be effective.

SECTION 28. NO THIRD PARTY BENEFICIARIES

This contract is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the parties hereto, and

shall not confer any rights or remedies upon any person or entity other than the parties hereto.

SECTION 29. ENTIRE AGREEMENT

The terms and provisions herein contained constitute the entire agreement by and between the County and the Town 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 paragraph shall not be construed to supersede any existing and applicable Mutual Aid Agreements.

SECTION 30. NOTICES

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

If to Wake County:

Mr. Raymond L. Echevarria
Wake County Dept of Fire and Emergency Management
P.O. Box 550
331 South McDowell Street
Raleigh, North Carolina 27601-1724

Telephone: (919) 856-6349

Facsimile: (919) 856-6236

If to Town:

SECTION 31. GOVERNING LAW

The Parties acknowledge that North Carolina law shall govern this Agreement.

SECTION 32. SEVERABILITY

If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

SECTION 33. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original.

SECTION 34. NO WAIVER OF SOVEREIGN IMMUNITY

The County and the Town agree that nothing herein shall be construed to mandate purchase of insurance by the County pursuant to N.C.G.S. 153A-435; or to be inconsistent with Wake County's "Resolution Regarding Limited Waiver of Sovereign Immunity" enacted October 6, 2003; or to in any other way waive the County's defense of sovereign or governmental immunity from any cause of action alleged or brought against the County for any reason if otherwise available as a matter of law.

SECTION 35. EFFECTIVE DATE OF AGREEMENT

The effective date of this Agreement shall be the date upon which the Chair of the Wake County Commissioners execute this agreement and the Wake County Clerk attests to such execution. This date shall be reflected in the first paragraph and Section 22 of this Agreement.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN TESTIMONY WHEREOF, the County has caused this instrument to be executed by the Chair of the Board of County Commissioners and attested by the Clerk of the Board of County Commissioners; and the Town has caused this instrument to be executed by its Mayor and attested by its Town Clerk, and its municipal seal hereto affixed, all by authorization of its governing board duly given.

This the _____ day of _____, 20_____.

WAKE COUNTY BOARD OF COMMISSIONERS

BY: _____
Chair

DATE: _____

Attest:

Clerk of the Board of County Commissioners
(SEAL)

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

Finance Director

TOWN OF _____

BY: _____
Mayor

DATE: _____

Attest:

Town Clerk
(SEAL)