

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

THIS AGREEMENT, made and entered into this the ~~1st~~ day of ~~July, 2010~~ by and between WAKE COUNTY, hereinafter referred to as the "County", and the FIRE DEPARTMENT, INC., hereinafter referred to as the "Fire Department";

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 nonprofit volunteer or community fire department; and
- B. WHEREAS, North Carolina General Statutes §153A-233 additionally provides that a county may contract for fire-fighting or prevention services with one or more incorporated volunteer fire departments, and may for these purposes appropriate funds not otherwise limited as to use by law;
- C. WHEREAS, the FIRE DEPARTMENT, 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 Fire Department is a North Carolina nonprofit corporation organized and authorized to furnish fire protection services and other services authorized by its charter to the citizens of its district; 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 Fire Department 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 there from for fire protection in Wake County; and

I. WHEREAS, the County and Fire Department desire to enter into this Agreement for the Fire Department to furnish fire protection for and within the described District.

AGREEMENT

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

SECTION 1. USE AND AMOUNT OF SERVICE TAX LEVIED

Wake County agrees to make funds, equipment, facilities and/or personnel available to the Fire Department of Wake County, from the proceeds of the tax levied from the special fire protection service tax district. The amount of such service tax levy shall be determined by the Board of the County Commissioners from year to year. The County will collect the funds from the special tax as may be levied as provided by law. For each fiscal year, the funds provided from the service tax district shall be based on the needs projected in the budget request jointly submitted by the Fire Department 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 Fire Department 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 retain fees for the following services provided in the unincorporated areas of the County: Forestry, Fire Training, Communications including WECO, computer aided dispatch and 800 MHZ radio system, and hazardous materials response; provided that prior to and as a condition of payment, the Fire Department has submitted such retainage request to the Fire Commission in a line item budget format for the Fire Commission's review and recommendation. In order to facilitate the Fire Commission's preparation of its budget recommendation, the County agrees to provide a copy of its line item budget request for retainage of these fees to the Fire Commission in accordance with the Fire Commission's annual budget calendar.

2.2 The County will pay the approved total appropriations for the Fire Department in equal monthly payments to said Fire Department on the last day of each month, provided that prior to and as a condition of payment, the Fire Department 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 Board of Commissioners has reviewed and approved said funding.

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. The Wake County Board of Commissioners will issue final approval of distribution.

SECTION 4. SERVICES FURNISHED BY COUNTY

The County shall furnish the following services to the contracting Fire Department 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 FIRE DEPARTMENT

The Fire Department will furnish fire protection and other emergency services as determined by the Department's Board of Directors and approved by the Wake County Board of Commissioners or as contracted for by the 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 Fire Department 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 Fire Department 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 Fire Department 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 Wake County Board of Commissioners.

SECTION 6. BOOKS AND RECORDS

The County may inspect the financial books and records of the Fire Department at reasonable times during regular business hours of the County. The Fire Department agrees that it will supply such financial books, records, and information or verification as may be reasonably requested by the County. The Fire Department 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

The Fire Department shall provide to its Board of Directors at least quarterly a financial report containing at a minimum 1) a Balance sheet 2) a Statement of Income and Expenses, and 3) a Transaction Detail for the entire quarter.

SECTION 8. ANNUAL AUDIT

The Fire Department 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 no later than 5:00 PM on the last working day of October of the current fiscal year.

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The County agrees, upon the timely written request of the Fire Department, to make available an audit conducted at Fire Department expense by an independent certified public accountant.

If the Fire Department elects to participate in the audit furnished by the County, then the Fire Department agrees to submit financial records and data to the County's auditor no later than 4:00 PM on the last business day of August of the current fiscal year. Such financial records and data shall include the records and documents enumerated in Appendix "A", "Information for Annual Audit", attached hereto and incorporated herein, and shall be presented in the manner and condition described therein.

If the Fire Department elects to assume responsibility for its own audit, the financial records and data enumerated in Appendix "A" shall be presented to the Fire Department's auditor in the manner and condition described therein.

In the event that the audit or management letter reveals any reportable and/or material issue(s) with regard to compliance with generally accepted

accounting principles, the Fire Department 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. If resolution of such issues requires professional advice on the part of that Fire Department's (or County's) auditor, the Fire Department shall bear the cost of such advice.

Should the Fire Department 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 Department is unable to deliver the audit for reasons beyond the control of the Fire Department or the Fire Department's auditor.

SECTION 9. DECISION MAKING PROCESS OPEN TO PUBLIC

Because of the Fire Department's extensive reliance on public funds for its operations, the public has a continuing interest in the Fire Department's decision-making processes and decisions regarding the spending of those funds. The Fire Department agrees to the provisions of this Section, acknowledging that such provisions are required by this Agreement notwithstanding that such provisions are not required by statute.

9.1 To ensure public trust, the Fire Department agrees that its Board of Directors meetings will be open to the public.

9.2 To ensure the ability of the public to attend those meetings, the Fire Department agrees to provide public notice of such meetings as described in Appendix B, "Board of Directors Meeting Notification," which is incorporated as part of this agreement. The Fire Department and the County agree that public notice of a Board of Directors meeting called in the midst of a declared disaster or emergency to make decisions required to respond to that disaster or emergency is not practical, and therefore not required.

9.3 To ensure the ability of the public to review the Fire Department's decision-making processes and spending decisions, the Fire Department agrees to take minutes of all meetings that would enable a person not in attendance to have a reasonable understanding of what happened, and to make minutes of those meetings available to the public by the time of the Fire Department Board of Directors' next meeting.

9.4 Notwithstanding the Fire Department's reliance on public funds, there are matters on which a Board of Directors must act that are non-public in nature. The County and the Fire Department agree that, in the course of a

public meeting, the Board of Directors may decide to close the meeting under the following circumstances:

- a) To consult with an attorney (to preserve attorney-client privilege) for an actual claim, judicial action, mediation, arbitration, etc. (does not include closing a meeting for “legal advice” or general legal information);
- b) To discuss purchase, exchange or lease of real property;
- c) To discuss the terms of an actual or proposed employment contract;
- d) To deal with personnel matters concerning a member and/or employee (does not include general personnel policy discussion/action);
- e) To request (or hear a report on) an investigation of alleged criminal misconduct directly concerning the Fire Department, a member or employee;
- f) To make decisions on matters other than those that directly or indirectly involve public funds;
- g) The Fire Department agrees ~~to keep that an agenda and~~ minutes ~~will be kept~~ for ~~any these~~ closed ~~meeting or parts~~ of a meeting, ~~which shall s, and be~~ made available for public examination at the next Board of Directors meeting, except for minutes of closed sessions dealing with criminal matters, personnel matters, sessions concerning matters other than those that directly or indirectly involving public funds, and, unless the Board decides otherwise, matters of attorney-client privilege). The Department agrees that the ~~agenda(s) and~~ minutes of ~~any closed meeting or part of a meeting these closed sessions will~~shall meet the same standards as minutes of all public meetings ~~and shall include a statement of the purpose of conducting the meeting in closed session..~~
- h) The County and Fire Department further agree that a “meeting” exists for purposes of this section when a majority of Board members get together physically, or via conference call or other electronic means for the purpose of transacting business, and that a social gathering of Board members at which business is not (and will not be) transacted is not a “meeting” for purposes of this section.
- i) Notwithstanding the provisions of this Section, ~~the County for audit purposes, the auditor will~~shall have access to all meeting ~~agenda(a) and~~ minutes, ~~including any closed meeting or part of a meeting, -~~without exception, upon request.

SECTION 10. NON-COMPLIANCE BY FIRE DEPARTMENT

If the County has a reasonable belief that the Fire Department has violated any provision of this Agreement, the County will provide the Fire Department written notice of the possible noncompliance and initiate an audit to verify compliance. If the County determines that the Fire Department 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 Fire Department 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 Fire Department makes improvements satisfactory to the County, no suspension shall occur. During the ninety (90) day period, the Fire Department 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 Fire Department 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 Fire Department pursuant to Section 2 herein.

SECTION 11. AUTHORITY TO MAINTAIN DELIVERY OF SERVICES

In the event that the Fire Department's Board of Directors determines that the Fire Department 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 Fire Department's Board of Directors shall immediately so notify the County, at which time the Fire Department authorizes the County or its agents to suspend the monthly payment to the Fire Department and to use such Department facilities and equipment as are necessary to maintain the delivery of fire services in the Fire Department's primary service area (to the extent the Fire Department exercises operational control and/or ownership interest over such facilities and equipment), so that an interruption of the Fire Department'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 Fire Department, the County and the Fire Department's Board will jointly select an independent third-party trustee who will regularly evaluate the County's use of such Fire Department facilities, equipment and resources on behalf of the Fire Department. During the time that the Fire Department is unable to provide services, the Board of Directors of the Fire Department shall cooperate with the Fire Commission. The Fire Commission shall determine if the Fire Department is able to resume delivery of reliable service.

SECTION 12. FINANCIAL MISMANAGEMENT

The Fire Department agrees that if its financial records are judged to be un-auditable for purposes of audit or establishment of a budget by the County's Director of Finance, or if a regular or special audit by a Certified Public Accountant reveals competent evidence of reckless or willful financial mismanagement practices or intentional or criminal wrongdoing, the Fire Department's Board of Directors will notify the County, at which time, the County and Board of Directors may jointly name a trustee who will assume responsibility for management and financial decision-making for the Fire Department until such time as the County and Fire Department's Board of Directors agree that the Fire Department's finances have been stabilized to the extent required to satisfy the financial management provisions of this Agreement.

SECTION 13. COMPOSITION OF BOARD OF DIRECTORS

The Fire Department agrees that as long as this Agreement or subsequent renewals of an existing Agreement are in effect, the following restrictions shall apply to the Board of Directors:

13.1 If the fire chief of the Department serves as a member of the Department's Board of Directors, that fire chief shall serve as an ex officio member, without vote, of the Department's Board of Directors.

13.2 No compensated current employee of the Fire Department shall serve as a member of the Department's Board of Directors. "Compensated current employee" shall be defined as a current employee of the Fire Department paid a salary or hourly wage for services provided to the Fire Department. This shall not include volunteers who receive stipends or reimbursements; or employees paid an hourly wage pursuant to any contract with a duration of less than thirty (30) days per calendar year.

13.3. No family member of 1) the Fire Department's Chief Officer or 2) the President of Board of Directors shall serve as a member of the Department's Board of Directors. "Chief Officer" shall be defined as the person designated by the Board as the Fire Chief of the Department. This designation shall not include other officers below the Fire Chief or reporting to the Fire Chief. "Family member" shall be defined as a parent, spouse, child, or sibling of the member, including a parent, child, or sibling of the member's spouse. If a family member as defined herein is a properly elected or appointed director at the time this Agreement is entered, then and in that event, the Board of Directors shall 1) request the resignation of such member or take any other action available under the current by-laws to insure that the family member does not serve as a director during the performance of this contract 2) change the by-laws at

the next annual meeting to insure that no family member serves as a director during the performance of this contract.

13.4. Each Board of Directors shall have a minimum of twenty percent (20%) citizen membership, unless prohibited under the Fire Department's by-laws in effect. If the by-laws in effect do not permit such composition, then and in that event, the Fire Department shall make a good faith effort to promote citizen participation on the Board to the extent permitted, and shall consider an amendment to the by-laws to allow compliance with this Section.

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SECTION 14, LIQUIDATION OR DISSOLUTION.

In the event of liquidation or dissolution of the Fire Department, all equipment and assets will be distributed in accordance with the Fire Department's Charter or Articles of Incorporation and the North Carolina Non-Profit Corporation Act. All assets and equipment that have been acquired using County funds, other than those accounts maintained by the County as special rural fire district funds, shall be returned to the County.

14.1 Should such liquidation ~~, or~~ dissolution, or termination of this Agreement pursuant to Section 24 occur while there remains an ongoing requirement for County provided fire protection in the Fire Department's primary service area, all required fire fighting apparatus and equipment (excluding real property) shall be assigned or distributed by the dissolving Fire Department to its successor in fire protection within the Fire Department's primary service area. Real property owned by the Fire Department and not reasonably required by the County for the purpose of fire protection in the sole discretion of the County, or real property which is already being used by other governmental entities for fire protection is excluded. Such unallocated Real property will be returned to public service use in consultation with homeowners within the Fire Department's primary service area. If in the sole discretion of the County, the County or successor fire department appointed by the County reasonably requires the use of the Real property to provide fire protection within the Department's primary service area, the Fire Department shall lease such Real property through a leasing instrument which will insure maintenance of such property for the duration of need, but will not accrue revenue to the Fire Department above and beyond such maintenance. The County in its sole discretion may decline to exercise this provision and the Department shall have no right to compel the exercise of this provision.

~~14.2. Section 14.1 shall not apply if the dissolution of the Department is the result of a deliberate act or decision on the part of Wake County to~~

~~assume complete control of fire protection in the Fire Department's service area notwithstanding the Fire Department's willingness and ability to continue delivery of services in compliance with this Agreement.~~

SECTION 15. MERGER.

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

SECTION 16. FIRE DEPARTMENT'S USE OF FUNDS.

The Fire Department shall use the funds subject to this Agreement in accordance with the annual Department Budget. This budget may be amended by the Fire Department Board of Directors within the approved total appropriations made available by this Agreement, provided that all appropriations must be used for furnishing fire protection within the district, and amendments providing for any expenditure that establishes a new operating expense that will extend beyond the current fiscal year shall require the written consent of the Director of the Department of Fire and Emergency Management and any amendment to the budget regardless of whether it extends beyond the current fiscal year shall be subject to the following provisions:

- A. The Department shall notify the Director of the Department of Fire and Emergency Management of addition or deletion of full- or part-time positions (defined here as positions budgeted at a pay rate equal to, or in excess of, the current federal minimum wage) or use of personnel funds for any purpose other than compensating persons occupying budgeted positions when such addition or deletion occurs.
- B. The Department is required to notify the County in writing within thirty (30) calendar days of the following changes:
 - 1. changes in the board of directors;
 - 2. changes in key personnel, including, but not limited to: chief executive officer, president, executive director, finance director, or equivalent;
 - 3. any modification in the use of County funds provided through this Agreement.

- ~~A.~~
- ~~B-C.~~ The Department agrees to utilize a formal bidding process for the following purchases:
 - 1) Equipment, apparatus, supplies and/or materials with a unit cost of \$30,000 or more; and/or

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2) Construction or repair to buildings (including design and other activities related thereto) at a cost of \$100,000 or more.

~~C~~-D. The Department agrees to utilize an informal bidding process for the following purchases:

- 1) Equipment, apparatus, supplies and/or materials with a unit cost between \$1,000 and \$29,999; and/or
- 2) Construction or repair of buildings (including design and other activities related thereto) at a cost of from \$5,000 to \$99,999.

~~D~~-E. The Fire Department and the County agree that purchase via state contract or "add-on" purchase to a contract competitively bid by another department party to this agreement, or by another North Carolina unit of government meets the requirements of this section.

F. The Fire Department and the County agree that, in the event of a bona fide emergency, the Department may proceed with emergency purchases without seeking formal or informal bids as described herein.

G. The Department agrees to give the County ten (10) business days advance notice in writing of any financial transaction which shall require the Department to create a security interest in favor of a third party in real or personal property wholly or partially acquired with County funds. Security interest shall be defined as any agreement or act that gives the beneficiary of the security interest preferential rights in the disposition of the secured asset, including but not limited to a mortgage, charge, pledge, or lien.

H. The County may request the Department at any time during the fiscal year to provide the County with satisfactory documentation that the funds are expended in an acceptable manner. County requests may include, but are not limited to, performance measures, financial statements, other funding agreements, and salaries and benefits information. Any request for information will be submitted in writing to the Department. The Department shall have up to thirty (30) calendar days from the date of written request to submit documentation.

I. The Department agrees that County funds shall not be requested or used to pay penalties or fines without County approval.

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SECTION 17. FIRE DEPARTMENT'S BUDGET PREPARATION

The Fire Department agrees that it shall continue to use the County's electronic financial reporting system furnished by Wake County for budget preparation and presentation purposes only, based upon the County's "chart of accounts" which provides accurate documentation of all of its receipts and disbursements, including (but not limited to) those related to the funds subject to this agreement, and the Fire Department and County will use the product(s) of that reporting system in the development and analysis of the budget for FY 2003 and subsequent fiscal years. The Fire Department agrees that it will make these reports available to the public upon request.

As part of every annual budget submission, the Fire Department is required to identify the name and rank of each paid employee that leaves employment with the Department and the name and rank of each new hire employee. The modified budget form provided by the County shall incorporate a request for this information.

As part of every annual budget submission, the Department is required to disclose any existing debt of the Department and any arrangements for repayment (ie. monthly payments, promissory note). "Existing Debt" shall be defined as any legally enforceable secured or unsecured obligation to pay money.

SECTION 18. INSURANCE AND INDEMNIFICATION

The Fire Department 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 A- and a financial size category of no less than 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.

- A. Worker's Compensation: Coverage A – Statutory – State of North Carolina. Coverage B – Employers Liability - \$100,000 each claim. The Fire Department shall participate in the North Carolina Volunteer Safety Worker's Compensation Fund.
- 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 Fire Department 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 Fire Department, 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 Fire Department 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 Fire Department 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., as well as its present nonprofit corporation status pursuant to Chapter 55A of the North Carolina General Statutes. The Fire Department shall continuously comply with all applicable laws, ordinances and regulations. The bylaws of the Fire Department shall have reasonable provisions enabling citizens of the District to participate in the affairs of the Fire Department, as determined necessary by the Fire Department Board of Directors. Cases in which a fire department 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 Fire Department's ISO rating falls below a Class 6 public protection classification for fire insurance grading purposes, the Fire Department 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 Department has a public protection classification equal to or better than a Class 6, the Fire Department is not required to downgrade to a Class 6.

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

SECTION 20. STANDARDS OF PERFORMANCE.

The Fire Department 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 other pertinent federal, state and County laws, regulations and standards. The Fire Department 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 Fire Department and are a part of this contract:

A. RESPONSE TIME: When one minute elapses after dispatch of the Fire Department with no response, the Fire Department 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: Each Fire Department shall have an adopted standard operating guideline that addresses the appropriate number of firefighters needed on all types of fire calls. A current, valid copy of the Fire Department's guideline shall be kept on file with the Wake County Department of Fire and Emergency Management.

C. AUTOMATIC AID AGREEMENTS: Each Fire Department shall provide automatic aid service for all structure fire calls (1 tanker or pumper/tanker) and two firefighters or other arrangement as agreed upon with the neighboring fire departments and approved by the County) to any neighboring Wake County Fire Department. Each fire department shall participate in countywide automatic aid through the quickest unit response program. Units will be dispatched based on quickest response as configured in computer aided dispatch system. Fire stations that are not continuously staffed on a 24 hour a day / 7 day a week basis may or may not participate in quickest unit response inside a municipality's corporate limits.

D. MUTUAL AID AGREEMENTS: All Fire Departments 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 Fire Department with a copy of the officially adopted mutual aid system plan. The agreement can be found as Appendix C of this contract.

E. TRAINING: Each Fire Department 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 Fire Department 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.
- Each fire department 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. FISCAL RESPONSIBILITY FUND BALANCE: At a minimum, all nonprofit Fire Departments shall have on hand, as of the beginning-end of the fiscal

year, ~~both~~ available (unrestricted) ~~Net Assets and Liquidity cash and investments~~ of at least 5% of their annual County appropriation ~~identified in their annual audited financial statements.~~ All Fire Departments will maintain the designated level of both net assets and liquidity defined as follows:

A) Net Assets: Unrestricted assets reported on the annual audited financial statements equal to or greater than 5% of the subsequent year's budget appropriation.

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B) Liquidity: Current assets less current liabilities reported on the annual financial statements equal to or greater than 5% of the subsequent year's budget appropriation. ~~As used in this section, "Net Assets" means spendable unrestricted assets including but not limited to cash, investments, receivables, and prepaid expenses in excess of current liabilities such as accounts payable, salaries payable, and other payables. As used in this section, "Liquidity" is defined as available cash or investments remaining after current liabilities (amounts due within twelve (12) months of the end of the fiscal year) are satisfied. Fixed assets, debt, and other long term liabilities are not to be considered in this calculation.~~

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At their discretion, departments may maintain a fund balance between 5-10% of their operating budget. This range is meant to give departments flexibility in managing their operating funds.

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Fire Departments with fund balance and reserves exceeding 10% of the department's annual operating budget are expected to use these resources for planned capital purchases, retiring debt, or emergency one-time purchases. Accordingly, a department with reserves in excess of 10% of its operating budget must choose from one or more of the following uses for the excess funds:

- Retire existing debt,
- Finance apparatus, station improvements, or other capital needs that have been identified as priorities by the Fire Commission and County staff in the Long Range Plan,
- Reserve funds for future capital projects that have been identified as priorities by the Fire Commission and County staff in the Long Range Plan (funds must be reserved formally with the department's auditor; Annual financial statements must reflect all such reservations),
- Make emergency non-budgeted expenditures for unanticipated repair
- Replacement of essential firefighting equipment one-time purchases for such equipment as SCBA and SCBA cylinders with specifications approved by Fire Commission
- Another option approved by the Fire Commission and the Department of Fire and Emergency Management Director and Budget Director.

Departments will notify County staff and the Fire Commission in writing of their intended use of excess funds. Should a department not choose from the options listed above, County staff and the Fire Commission will consider excess funds when determining the department's operating appropriation from the Fire Tax.

I. FIXED ASSETS: Each Fire Department shall maintain an accurate inventory of all equipment valued at \$1,000.00 or more. This fixed asset list shall be kept for each Fire Department by station and be available for review at reasonable times during business hours of the County.

J. PUBLIC FIRE EDUCATION: Each Fire Department shall develop a plan for providing public fire education for: 1) Children; 2) Businesses; and 3) Homes within each fire district. Each Fire Department'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). Fire Departments 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: Each Fire Department 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. Each Fire Department 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 Fire Departments 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 Fire Department 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 Fire Department 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 Fire Department regarding the cause of the fire.

M. FIRE HYDRANTS: Each Fire Department 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. Each Fire Department 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 fire departments shall be available for review by the Wake County Department of Fire and Emergency Management.

N. MEDICAL FIRST RESPONDER: Each Fire Department shall participate in the Wake County Medical First Responder Program. Each fire department 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 Fire Department shall have an adopted guideline that addresses the Medical First Responder Program and Operation.

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

P. DISPOSING OF EQUIPMENT: Each Fire Department shall offer equipment that they have deemed necessary to sell to other Wake County Fire Departments prior to offering to outside agencies.

Q. PERSONNEL: The Department agrees to adopt and to initiate compliance with, and enforcement of, personnel rules for compensated and volunteer members that are in compliance with FLSA and any other applicable federal or state law, and 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: The Fire Department agrees to conduct a background-check for all "finalist" candidates for full-time and part-time employment and volunteer membership prior to hire or appointment and on all members at least once every three years.

- No person with a felony or serious misdemeanor conviction(s) shall be hired by the Fire Department. "Serious misdemeanor conviction(s)" shall be defined to include offenses reflective of violent criminal behavior or dishonesty. If additional funding is required to perform the background checks, background checks will be done subject to availability of funds. Nothing herein shall be construed to prevent the Fire Department from hiring an individual who has an isolated misdemeanor conviction remote in time but has demonstrated a sustained record of responsible, lawful behavior and is otherwise fit for duty.

- All paid and volunteer employees of the Fire Department shall be subject to for cause and/or suspicionless drug testing at any time as deemed appropriate by the Fire Department.
- The Fire Department shall review each paid and volunteer member's county of residence at least once every three years to verify that the member meets departmental requirements.

S. DRIVER'S LICENSE CHECK: The Department agrees that it will enroll in the North Carolina Transportation Notification System and will conduct a driver license record review at least annually on each member and employee.

T. ADMINISTRATIVE AND OPERATIONAL PROCEDURES: The Department agrees to participate jointly with the County in development and implementation of countywide fire service standard administrative and operational procedures through the Fire Commission. Nothing in this section shall prohibit the Department from establishing or maintaining its own standard administrative and operational procedures provided they are not in conflict with County-wide procedures as described herein, or the County from issuance of County-wide emergency procedures in event of a declared disaster or emergency.

U. AUXILIARY SERVICES: Each Fire Department may choose to participate in Wake County Auxiliary Services Programs. Participation is voluntary. However, each 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. Fire Departments choosing to participate in these programs shall have adopted guidelines that address the appropriate functions. If a department chooses to participate in any of these programs, the agreements can be found as Appendices C – K of 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 Fire Department agree to abide by the requirements contained in the ~~Fire Service Compensation Guidelines.~~ Wake County Fire Compensation Administrative Guidelines as approved by the Wake County Board of Commissioners on October 20, 2003 and as they may be amended from time to time during the existence of the Agreement. The Department shall adopt the said Fire Service Compensation Guidelines and agree to operate their Department's pay system by the terms of said Fire Compensation Guidelines. The Department acknowledges review and acceptance of the most current Wake County Fire Compensation Administrative Guidelines as amended and approved by resolution of the Wake County Board of Commissioners on [redacted]

Comment [b1]: Consider putting provision in guidelines that county funds shall not be used to pay penalties or fines without county approval

Comment [b2]: Add a date

W. EMERGENCY ALERTING: The Fire Department 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 Department, including any officer, employee, or agent of the Department is an independent contractor of the County and none of these shall be considered employees of the County. The relationship between the parties shall be limited to the performance of this Agreement in accordance with its terms. County and the Fire Department agree that the Fire 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 Fire Department's acts or omissions. Neither the Department, any officer, employee, or agent of the Department shall be deemed an officer, employees, or agent of the County. No liability for benefits, such as workers compensation, pension rights, or other provisions shall arise out of or accrue to any party, its officers, agents, or employees as a result of this Agreement or performance thereof.

SECTION 22. TERM OF AGREEMENT.

The term of this agreement shall be for one year, beginning on _____ and ending on _____ ~~come-~~ effective as of July 1, 2010, unless earlier terminated by either party in accordance with Section 24 of this agreement. This term is subject to the continued legal existence of the District(s) and the Fire Department, ~~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 23 of this agreement.~~

SECTION 23. NON-ASSIGNABILITY

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

SECTION 24. TERMINATION.

This Contract may be terminated by either party with or without cause 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 Fire Department to agree upon the amount of funding shall terminate this contract in accordance with this section of this 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 Fire Department 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 Department as to the meaning and/or applicability of any section of the Agreement, the County and the Fire Department 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 Fire Department 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 Fire Department and shall supersede all previous communications, representation or agreement, 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

Telephone: (919) 856-6349
Facsimile: (919) 856-6236

If to Fire Department:

XXXXXXX

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 Fire Department 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 Wake County executes this agreement. This date shall be reflected in the first paragraph of this Agreement.

(THIS SPACE INTENTIONALLY LEFT BLANK)

IN TESTIMONY WHEREOF, the County has caused this instrument to be executed by the Wake County Manager, and the Fire Department has caused this instrument to be signed in its name by its President, attested by its Secretary, and its corporate seal hereto affixed, all by authorization of its Board of Directors duly given.

This the _____ day of _____, 20_____.

WAKE COUNTY

BY: _____
David Cooke, or designee
Wake County Manager

BY: _____
Raymond Echevarria
Wake County Fire Marshal

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

Finance Director, or designee

FIRE DEPARTMENT

BY: _____
President of Fire Department

Attest:

Secretary of the Fire Department
(SEAL)

**FIRE PROTECTION MUTUAL AID AGREEMENT
WAKE COUNTY, NORTH CAROLINA**

Comment [b3]: Change statutory reference to N.C.G.S. 58-83-1 in Attachment C

THIS AGREEMENT, made and entered into this ____ day of _____, 20__, by and between the _____ Fire Department, Inc. and the County of Wake.

WITNESSETH:

THAT, WHEREAS, North Carolina General Statutes § 58-82-1 authorizes counties, municipal corporations and fire protection districts to send (or decline to send) firefighters and firefighting equipment beyond the response areas that they normally serve (a practice generally known as “mutual aid”), provides for retention of rights, privileges and immunities enjoyed by firefighters in their response areas when those firefighters respond beyond those response areas, and further provides for retention of rights, privileges and immunities of counties, municipal corporations and fire protection districts enjoyed by those agencies in their response areas when those agencies respond beyond those response areas; and

WHEREAS, it is in the best interests of Wake County, municipal corporations within Wake County and private non-profit corporation fire departments with which Wake County contracts to formalize their commitment to mutual aid in the form of a mutual aid agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein by and among the parties hereto, it is hereby agreed as follows:

1. The following definitions are herewith adopted as part of this Agreement:
 - a. FIRE CHIEF means the chief operating officer of a lawfully-organized fire department;
 - b. FIRE DEPARTMENT means any subdivision of County or municipal government that delivers fire protection services, or a private non-profit corporation that delivers fire protection services within Wake County pursuant to a contract with Wake County;
 - c. MEMBER means (and is limited to) a bona fide employee or member in good standing of a subdivision of County or municipal government or private non-profit corporation fire

department that delivers fire protection services, and that is party to this Agreement.

- d. FIRE PROTECTION SERVICES includes (but is not limited to) firefighting, hazardous-materials release control, emergency medical event response, technical rescue response (including, but not limited to, structural collapse rescue, confined-space rescue, and water rescue) and such other emergency response activities that are customarily associated with fire department response, or are otherwise authorized by state law, subject to the limitations contained elsewhere in this Agreement.
- e. MUTUAL AID RESPONSE is a response of the personnel and equipment of a fire department party to this Agreement requested by the fire chief of a fire department party to this Agreement, or his or her designee, in command of an emergency response activity, and is in addition to, and does not supercede or void any automatic-aid response.

2. Each fire department party to this Agreement agrees to:

- a. Provide for a written standard operating procedure that gives direction to fire department members on how a mutual aid response will be summoned (on the part of a requesting fire department) or undertaken (on the part of a responding fire department);
- b. Assume responsibility for implementation and coordination of an incident command system at a mutual aid event that incorporates the operations of responding departments into that system, including delivery of assignments, information and direction to the ranking officer of the responding fire department present at the mutual aid scene;
- c. Waive any and all claims of liability against a fire department requesting mutual aid for death or injury of any member, for damage, theft, loss or destruction of any fire department equipment or personal property of fire department members in connection with response to, operation at, and/or return from a mutual aid event;
- d. Indemnify and hold harmless any fire department, fire chief or fire department member responding to a request for mutual aid from third-party claims arising from third-party personal injury or property damage in connection with provision of fire protection

services at that mutual aid event, or any fire department that elects to respond to a mutual aid request in a manner different from the request, or any fire department that elects not to respond to a mutual aid request because of immediate community protection needs of its own;

- e. Waive any and all claims against a fire department requesting mutual aid for any costs incurred in connection with response to, operation at, and/or return from a mutual aid event, including (but not limited to) salaries, reimbursements or other compensation (nominal or otherwise) and costs of apparatus and other equipment operation, except that a responding department that expends materials that, by their nature, are consumed in connection with their intended use (such as firefighting foams and substantially similar extinguishing, foaming, sealing or other agents) in connection with delivery of fire protection services may present to the requesting department an itemized statement of costs for such materials, upon receipt of which such materials shall be paid for by the requesting department;
 - f. Refrain from undertaking any fire protection service activity, including (but not limited to) technical rescue activities, when the responding department is neither trained nor equipped to undertake such activity, and so advise the requesting department's incident commander upon request for delivery of such service; and
 - g. Upon request, to furnish to the Wake County Fire Marshal information on fire protection service equipment, capabilities and personnel so that the Fire Marshal may maintain a "mutual aid resource database" for use by all parties to the Agreement.
3. This Agreement shall remain in effect from the date of execution until June 30, 2020, and, thereafter shall renew automatically on July 1 of each subsequent year, except that:
- (a) A party to this Agreement may elect to terminate its participation upon thirty-day written notice, mailed via registered mail-return receipt requested to the Wake County Fire Marshal; or
 - (b) A party to this Agreement may propose an amendment to this Agreement, applicable to all parties, to the Wake County Fire Commission for public discussion and

review, and for approval by the Wake County Board of Commissioners.

4. Upon initiation of this Agreement, and not less frequently than annually, the Wake County Fire Marshal shall furnish to all parties to this agreement a list of all parties to this Agreement. In the event that a party to this Agreement elects to terminate its participation, the Fire Marshal shall notify all other parties to the Agreement of such action by conventional mail, electronic mail and facsimile as soon as possible after the Fire Marshal's receipt of notice of such termination.
5. Nothing in this Agreement will be deemed to interfere with the right of any party to enter into a mutual aid agreement with a fire department outside of Wake County.

IN WITNESS WHEREOF, the parties have hereunto set their hands, the day and year first written above.

Dated this _____ day of _____, 2010.

WAKE COUNTY

BY: _____
David Cooke, or designee
Wake County Manager

BY: _____
Raymond Echevarria
Wake County Fire Marshal

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

Finance Director, or designee

FIRE DEPARTMENT

BY: _____
President of Fire Department

Attest:

Secretary of the Fire Department
(SEAL)