

STATE OF NORTH CAROLINA

AGREEMENT FOR  
FIRE PROTECTION & AMBULANCE and RESCUE SERVICES

COUNTY OF BUNCOMBE

THIS AGREEMENT ("**Agreement**") is dated as of \_\_\_\_ day of October, 2015, and is by and between BUNCOMBE COUNTY, NORTH CAROLINA, a public body politic and corporate of the State of North Carolina ("**County**"), and The Upper Hominy Volunteer Fire and Rescue Department, Incorporated, a North Carolina non-profit corporation organized and doing business in the State of North Carolina ("**Department**").

Whereas, the Buncombe County Board of Commissioners have heretofore taken action to create and establish nineteen (19) coterminous Service Districts for purposes of Fire Protection Services as well as Ambulance and Rescue Services ("Service Districts") in Buncombe County pursuant to North Carolina General Statutes Article 16, Chapter 153A.

Whereas, the Upper Hominy Fire Protection & Ambulance and Rescue Service District has been established and created effective July 1, 2016.

Whereas, in accordance with said Article 16, Buncombe County must provide, maintain or let contracts for the services for Service Districts in which the residents of the districts will be taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.

Whereas, the Department, agrees to contract with County to provide fire protection and other emergency services in the Upper Hominy Fire Protection & Ambulance and Rescue Service District ("District").

Whereas, Chapter 159 of the North Carolina General Statutes 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.

Whereas, the Department is a North Carolina nonprofit corporation organized and authorized to furnish fire protection and emergency services to the citizens of its district.

Whereas, the Department has secured equipment, land and buildings for the operation of Fire Station(s).

Whereas, County levies and collects a special tax in the Upper Hominy Fire Protection & Ambulance and Rescue Service District and is responsible for appropriating the funds derived therefrom for fire protection and other services in said District.

Whereas, County and Department desire to enter into this agreement for the Department to furnish fire protection and other emergency services for and within the said District.

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

1. This Agreement shall be valid for a term of five (5) years, beginning July 1, 2016, and may be extended for an additional term of the same number of years upon written request of Department which shall include certification that Department has been continuously in compliance with the requirements of the Office of State Fire Marshal as well as all county Emergency Medical System ("EMS") and North Carolina Office of EMS, as applicable.

2. For each fiscal year, County agrees to appropriate and make funds available to the Department from the special tax levied in the said District. The amount of such service tax levy shall be determined by the Board of the County Commissioners from year to year based on the needs projected in the budget request jointly submitted by the 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 other emergency services within the District. The County will collect the funds from the special tax as may be levied as provided by law.

3. The funds collected by the County as a result of the tax collected in the District and the corresponding sales tax revenue due to the District will be paid over to said Department by the last day of each month.

4. Department will furnish fire protection and other emergency services as part of the Buncombe County EMS System and shall provide the necessary equipment, personnel and those things necessary for furnishing such emergency services protection for the District and the Buncombe County EMS System. The services shall be in accordance with minimum standards set forth in this Agreement and as required by federal and State law.

5. The tax levied and collected by the County and paid to the Department by the County shall be used for fire department operations, fire protection and other emergency services for the District and other areas of response as dispatched and to meet the standards established by this agreement.

6. County may inspect all books and accounts for the Fire Department at any time that it shall desire and said inspection shall be conducted by the Buncombe County Finance Office. It is further agreed that the Fire Department will present the Buncombe County Finance Office with an annual audit by a CPA which shall be in conformity with generally accepted accounting principles.

7. Further, the Department agrees to comply with County budgeting procedures and other procedures provided for by state law. Budget procedures and deadlines will be determined during the County's annual budget process, generally being communicated by the Buncombe County Budget & Management Services Office to the Department no later than April 1<sup>st</sup> of every calendar during the term of this agreement. The Department agrees to submit budget estimates at a minimum of category level (personnel expenses, operating expenses, capital, etc.) with requested tax rate clearly stated to the Buncombe County Budget & Management Services Office by the budget submission deadline provided. Should the Department fail to provide the required budget estimates by April 30<sup>th</sup> of any calendar year then the tax rate for the District will automatically default to the rate in effect for the preceding fiscal year.

8. Department agrees to present to the County an annual audit and accompanying management letter prepared according to 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 November of each current fiscal year. The County agrees to make available an audit conducted at Department expense by an independent certified public accountant.

9. If the Department elects to participate in the audit furnished by the County, the Department agrees to submit financial records and data to the County's auditor no later than 5:00 PM on the last business day of November of the current fiscal year.

10. In the event that the audit or management letter reveals a reportable and/or material issue(s) with regard to compliance with generally accepted accounting principles, the Department shall provide a written statement 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 Department's (or County's) auditor, the Department shall bear the cost of such advice.

11. Should the Department fail to submit its audit report to the County within the above time period, the County shall 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 Department or the Department's auditor.

12. The Department agrees that if the Department's financial records are judged to be unauditible 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 management practices or intentional or criminal wrongdoing, the 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 Department until such time as the County and Department's Board of Directors agree that the Department's finances have been stabilized to the extent required to satisfy the financial-management provisions of this Agreement.

13. Because of the Department's extensive reliance on public funds for its operations, the public has a continuing interest in the Department's decision-making processes and decisions regarding the spending of those funds. To ensure public trust, the Department agrees that its Board of Directors' meetings will be open to the public.

14. To ensure the ability of the public to attend those meetings, the Department agrees to provide public notice of such meetings. The 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.

15. To ensure the ability of the public to review the Department's decision-making processes and spending decisions, the 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 Department Board of Directors' next meeting.

16. Notwithstanding the Department's reliance on public funds, there are matters on which the Town Council must act that are non-public in nature. The County and the Department agree that, in the course of a public meeting, the Town Council may decide to close the meeting under the following circumstances:

- 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);
- To discuss purchase, exchange or lease of real property;
- To discuss the terms of an actual or proposed employment contract;
- To deal with personnel matters concerning a member and/or employee (does not include general personnel policy discussion/action);
- To request (or hear a report on) an investigation of alleged criminal misconduct directly concerning the Department, a member or employee;
- To make decisions on matters other than those that directly or indirectly involve public funds.

17. The Department agrees that it will keep minutes of such closed sessions in the form of a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

18. The County and 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.

19. If the County determines that the Department has failed to render the fire protection and other emergency services to the District as provided in this agreement, then the County shall give the Department ninety (90) days advance written notice that the funds allocated are subject to suspension. If during the said ninety (90) day period, the Department makes improvements satisfactory to the County, no suspension shall occur. During the ninety (90) day period, the Department is not relieved of their responsibility to provide fire protection and other emergency services in a manner otherwise consistent with the terms of this agreement.

20. In the event that the Department's Board of Directors determines that the Department is unable to reliably deliver the services described herein, for any reason or no reason, the Department's Board of Directors shall immediately so notify the County, at which time the County is authorized to use such Department facilities and equipment as are necessary to maintain the delivery of fire and other emergency services in the District area (to the extent the Department exercises operational control and/or ownership interest over such facilities and equipment), so that an interruption of the Department's ability to deliver such services will not interfere with the standards of fire protection and

other emergency services provided for in this Agreement. Should damage to Department facilities or equipment occur during the operation described herein, the County will indemnify and save harmless the Department from any and all liability and expenses including attorney's fees, court costs and other costs incurred by the Department caused by the negligence or willful misconduct of the County, its agents or employees up to the limits of its insurance until resumption of service by the Department.

21. In the event of a liquidation or dissolution of the Department pursuant to cessation of service or action by the Department's Board of Directors, all equipment and assets owned by the Department and not otherwise required for retirement of lawful debt will be distributed in accordance with the Department's Charter and the North Carolina Non-Profit Corporations Act, except that all assets, equipment and real property acquired with tax funds collected by County and appropriated to the Department shall be assigned to the County in a proportion equivalent to the proportion of the County's tax fund contribution to the Department's budget at the time the asset, equipment and/or real property was acquired. Such assets shall be assigned or distributed as follows: (1) by the dissolving Department to its successor in fire protection within the Department's primary service area; and/or (2) to other fire departments in County through, and with the approval of the County's Board of Commissioners. The County agrees that, given the infrequent nature of such a liquidation or dissolution, receipts from such sale will not be considered revenues for purposes of offsetting Fire Service District Tax rate adjustment in support of Fire District capital improvements. This section shall not apply if the dissolution is the result of a deliberate act on the part of County to assume immediate and complete control of fire protection in the Department's service area notwithstanding the Department's willingness and ability to continue delivery of services in compliance with this agreement.

22. The Department shall use the funds subject to this Agreement in accordance with the annual Department Budget. The parties further agree as follows:

a. The Department agrees to utilize a formal bidding processes in compliance with North Carolina laws.

b. The Department and County agree that the 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.

c. 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.

23. The Department shall obtain and keep in force during the term of this agreement the following minimum insurance coverage:

**a. Worker's Compensation** – at the statutory limits in compliance with applicable State and Federal laws. The Contractor shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

**b. Employer's Liability** - with minimum limits of \$1,000,000 each accident/\$1,000,000 disease each employee/\$1,000,000 disease policy limit.

**c. Commercial General Liability** - covering all operations performed by the Contractor with a minimum limit of \$1,000,000 per occurrence with a \$3,000,000 aggregate.

**d. Professional Health Care Liability** - covering the Contractor's acts, errors, or omissions in the rendering of or failure to render professional health care services with a minimum limit of \$1,000,000 per occurrence with a \$3,000,000 aggregate

**d. Business Automobile Liability** - covering all owned, non-owned, and hired vehicles used in performance of the contract. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per NCGS 20-279.21.

**e. Excess or Umbrella Liability** – shall extend an additional \$2,000,000 limit / \$2,000,000 aggregate over the underlying commercial general liability, professional health care liability, and business auto liability insurance. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

24. The Department shall provide the County with certificates of insurance evidencing the above amounts. The liability certificates shall name Buncombe County as additional insured under the policies. The certificates shall provide that policies shall not be canceled or changed until thirty (30) days written notice has been given to the County. All insurance shall be procured from reputable insurers authorized to do business in North Carolina.

25. Providing and maintaining adequate insurance coverage is a material obligation of the Department and is of the essence of this contract. The Department may meet its requirements of maintaining specified coverage and limits by demonstrating to the County that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the County. The Department shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Department shall not be interpreted as limiting the Department's liability and obligations under the contract.

26. The Department shall take all actions as required to meet and maintain a 9S Rating for Initial Certification/Re-Inspection of Fire Departments in North Carolina, or better, with the North Carolina Department of Insurance.

27. The Department shall continuously comply with all applicable laws, ordinances and regulations. In particular, all fire protection services of Department shall comply with the requirements of the Office of State Fire Marshal as well as provisions of the North Carolina Administrative Code, Title 11, Department of Insurance, Chapter 5, Fire and Rescue Services Division, as same may be updated, amended or replaced from time to time.

28. Should the Department also provide emergency medical, rescue, and/or ambulance services, then the Department shall continuously comply with all applicable laws, ordinances and regulations. In particular, all emergency medical, rescue, and/or ambulance services of Department shall comply with all such services requirements of the Department of Health and Human Services as well as pertinent provisions of the North Carolina Administrative Code, Title 10A, Department of Health and Human Services, Chapter 13, NC Medical Care Commission, Subchapter 13P, Emergency Medical Services and Trauma Rules, as same may be updated, amended or replaced from time to time. Also, the Department must be continuously in compliance with all County EMS and the North Carolina Office of EMS requirements and retain all necessary licenses and permits from the North Carolina Office of EMS.

29. The bylaws of the 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 the Department loses or receives a reduced rating will be examined by the County Department of Emergency Services.

30. The Department shall take all actions as required to maintain its present nonprofit corporation status pursuant to Chapter 55A of the North Carolina General Statutes.

31. Department shall indemnify, defend and hold harmless the County and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, the performance of this Agreement or the actions of the Department its officials, employees, or students under this Agreement up to the limits of its insurance. Department shall indemnify the County in all instances except where the County is primarily negligent through an act or omission. Nothing herein shall be construed as a waiver on the part of the County to any defense of any claim, including, but not limited to the defense of governmental immunity. And, that the County's obligations under this paragraph shall be limited to the extent and manner of recovery pursuant to County's self-insured claim policies and North Carolina law.

32. **Termination for Convenience.** This Agreement may be terminated by either party at the end of any fiscal year by giving written notice of intent to terminate to the other party at least one hundred eighty (180) days prior to the expiration of the then current fiscal year.

33. **Termination for Cause.** In the event that Department fails to maintain applicable certifications and applicable permits from the Office of State Fire Marshal and/or the North Carolina Office of EMS and/or should any unsatisfactory condition make the termination of this Agreement in the best interests of the District then this Agreement may be terminated by County by giving Department sixty (60) days advance written notice of termination.

34. **Governing Law.** The parties intend that this Agreement shall be governed by the law of the State of North Carolina as follows:

#### Mediation

- Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the Buncombe County Resident Superior Court Judge shall name a mediator to hear the matter.
- The parties shall equally share the mediator's fee. The mediation shall be held in Asheville at a location designated by the mediator selected to hear the matter.

#### Legal Proceedings

- Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this agreement. The Parties hereby

agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.

35. **Miscellaneous.** (a) Notice. Except as otherwise provided in this Agreement, all notices and communications required to be sent pursuant to the terms of this Agreement shall be in writing and shall be delivered by hand delivery, certified mail, return receipt requested, or by Federal Express or similar overnight courier service, addressed as follows: County: County Manager, 200 College Street, Asheville NC 28801. Department: \_\_\_\_\_. All such notices and other communications, which are addressed as provided in this Paragraph, shall be effective upon receipt. The parties hereto may from time to time change their respective addresses for the purpose of notice to that party by a similar notice specifying a new address, but no such change shall be deemed to have been given until it is actually received by the party sought to be charged with its contents. (b) Whole Agreement. This Agreement contains all of the agreements and representations between the parties with respect to the subject matter hereof. None of the terms of this Agreement shall be waived or modified to any extent, except by written instrument signed and delivered by both parties. (c) Severability/Survival. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect. The covenants contained in this Agreement, which by their terms require their performance after the expiration or termination of this Agreement, shall be enforceable notwithstanding the expiration or termination of this Agreement. (d) Execution. This Agreement shall only become binding when signed by both Department and County. The parties intend that emailed signatures constitute original signatures and that an email-transmitted Agreement containing signatures of the parties is binding on the parties having signed such email-transmitted Agreement. The parties agree that the Uniform Electronic Transactions Act shall be applicable and enforceable as to such execution and delivery. (e) Duplicate Counterparts. This Agreement may be signed in counterparts by the parties. It is not necessary that the signatures of the parties appear on the same counterpart or counterparts. All counterparts shall collectively constitute a single agreement. Executed counterparts of this Agreement may be delivered by email transmission. (f) Authority. The individuals signing this Agreement personally warrant that they have the right and power to enter into this Agreement on behalf of Department and County, to grant the rights granted under this Agreement, and to undertake the obligations undertaken in this Agreement. (g) Captions. The captions or headings in this Agreement are inserted only as a matter of convenience and for reference and they in no way define, limit, or describe the scope of this Agreement or the intent of any provision hereof.

***[Signature Pages Follow]***



The Upper Hominy Volunteer Fire and Rescue Department, Incorporated

By: \_\_\_\_\_

Its, \_\_\_\_\_.

ATTEST:

County of Buncombe

\_\_\_\_\_  
Kathy Hughes, Clerk to the Board

By: \_\_\_\_\_  
Wanda Greene, County Manager