

STATE OF NORTH CAROLINA

AGREEMENT FOR
FIRE PROTECTION and RESCUE SERVICES

COUNTY OF BUNCOMBE

THIS AGREEMENT ("**Agreement**") is dated as of ____ day of _____, and is by and between BUNCOMBE COUNTY, NORTH CAROLINA, a public body politic and corporate of the State of North Carolina ("**County**"), and the **Crabtree-Ironduff Volunteer Fire Department, Inc.**, a nonprofit 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 Leicester Fire Protection & Ambulance and Rescue Service District (the "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, pursuant to GS §153A-233 a county may contract for firefighting and fire prevention services with a one or more incorporated volunteer fire departments and may for these purposes appropriate funds not otherwise limited by state law.

Whereas, due to geographical constraints, the Crabtree-Iron Duff Volunteer Fire Department is able to more timely service certain areas of the Leicester Service District than the Leicester Volunteer Fire Department;

Whereas, the County, Department and Leicester Volunteer Fire Department agree that approximately 60 parcels (see attachment) would be better served by the Crabtree-Iron Duff Volunteer Fire Department;

Whereas, the Department agrees to contract with County to provide fire protection and other emergency services in the District.

Whereas, the Department is a North Carolina nonprofit corporation organized and authorized to furnish fire protection and emergency services to the citizens of the 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 has secured equipment, land and buildings for the operation of Fire Station(s).

Whereas, the County levies and collects a special tax in the District and agrees to appropriate \$20,000.00 per year for fire protection and other services for the identified parcels 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 effective July 1, 2020 and expire June 30, 2021.
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 will be \$20,000.00.
3. The funds collected by the County as a result of the tax collected in the District will be paid 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. 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.
7. The Department shall use the funds subject to this Agreement as defined in its 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.

8. 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 \$2,000,000 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

e. 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.

f. Excess or Umbrella Liability – may be procured by Department to bring levels of insurance coverage up to the above limits for the underlying commercial general liability, professional health care liability, workers compensation, employer's liability, and business auto liability insurance with a minimum limit of \$2,000,000 with a \$2,000,000 aggregate. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

9. 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.

10. 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. Nothing herein shall be construed as a waiver on the part of the City to any defense of any claim, including, but not limited to the defense of governmental immunity.

11. 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.

12. 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.

13. 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.

14. 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.

15. Governing Law. The parties intend that this Agreement shall be governed by the laws 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.

16. 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) Termination without Cause: Either party may terminate this Agreement without cause by giving ninety (90) days prior written notice to the other party. (c) 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. (d) 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. (e) 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. (f) 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. (g) 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. (h) 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.

Attest:

Crabtree-Ironduff Volunteer Fire Department, Inc.

By: _____
Junior Messer, Fire Chief

Attest:

County of Buncombe

Lamar Joyner, Clerk to the Board

By: _____
Avril Pinder,
County Manager

Attachment: Parcels within Leicester Service District to be serviced by Crabtree-Iron Bluff for tax year 2018.

Tax Year	PARCEL_ID	Leicester Fire Tax
2018	874197463500000	71.82
2018	874197576600000	589.40
2018	874197650000000	18.06
2018	874197729100000	92.96
2018	874197956300000	606.90
2018	874197977500000	595.14
2018	875106189300000	31.50
2018	875107133100000	51.80
2018	875107800400000	435.68
2018	875108456400000	419.02
2018	875114684400000	41.30
2018	875115342000000	194.46
2018	875115468600000	135.52
2018	875115534600000	73.92
2018	875115668500000	81.06
2018	875115711100000	151.20
2018	875115742300000	432.74
2018	875115782700000	85.40
2018	875115936300000	81.62
2018	875115956100000	80.08
2018	875115975600000	573.58
2018	875116046800000	131.74
2018	875116248300000	180.32
2018	875116316200000	1,054.20
2018	875116468000000	88.62
2018	875116625200000	313.60
2018	875116664300000	750.68
2018	875116706500000	429.24
2018	875116732900000	861.56
2018	875116826300000	76.72
2018	875116908300000	670.88
2018	875117040000000	442.40
2018	875117183500000	444.92
2018	875118711500000	2,410.94
2018	8751187115C001A	342.16
2018	8751187115C001B	454.44
2018	8751187115C002A	378.56
2018	8751187115C002B	410.06
2018	8751187115C003A	422.66
2018	8751187115C003B	358.54
2018	8751187115C004B	480.20

Tax Year	PARCEL_ID	Leicester Fire Tax
2018	8751187115C005A	492.24
2018	8751187115C005B	494.90
2018	8751187115C006B	627.62
2018	8751187115C007A	499.10
2018	875125016600000	153.02
2018	875125267700000	158.34
2018	875125299900000	157.92
2018	875125448100000	328.02
2018	875126378900000	135.10
2018	875126421600000	73.36
2018	875126638600000	75.04
2018	875126645500000	133.28
2018	875126667100000	120.26
2018	875126712700000	163.80
2018	875127219000000	91.70
2018	875127409000000	117.46
2018	875127621700000	103.04
2018	875127728200000	132.30
2018	875127774400000	285.60
2018	875128473100000	235.90