

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

**INTER-GOVERNMENTAL AGREEMENT BETWEEN
DURHAM COUNTY AND THE CITY OF DURHAM FOR
CONSOLIDATION OF FIRE SERVICES
IN THE DURHAM COUNTY FIRE SERVICE DISTRICT LOCATED IN
THE SOUTHERN PORTION OF DURHAM COUNTY**

THIS INTER-GOVERNMENTAL AGREEMENT is entered into by the **COUNTY OF DURHAM** a political subdivision of the State of North Carolina (County) and the **CITY OF DURHAM**, a municipal corporation organized and existing under the laws of the State of North Carolina (City), and together collectively the County and the City may be referred to as the "Parties." This Agreement shall be effective on the 1st of July, 2018 (Effective Date).

Background. This Agreement is entered into pursuant to North Carolina General Statutes, Article 23, of Chapter 153A and Article 20, Part 1 of Chapter 160A. The Durham County Board of County Commissioners and the Durham City Council find that it is mandatory to protect the life and property of all citizens within the Parties' respective jurisdictions by providing fire protection and first responder services in an efficient and effective manner.

It is the intent of the County and the City to enter into this Agreement to achieve and accomplish objectives including, but not limited, to the following:

- a) The development and implementation of a consolidated fire department that will provide the same or higher level of fire, rescue, and first responder services than currently being provided by Durham County Fire Rescue (DCFR) in the southern part of the County as previously provided by the separate City of Durham Fire Department (DFD) and DCFR departments;
- b) The utilization of necessary personnel, rolling stock, and facilities, including the construction of new facilities and the purchase of new fire-fighting apparatus, to meet the needs of serving the population in southern Durham County and to maintain or improve on Insurance Services Office (ISO) ratings in an effort to achieve the lowest insurance rates for residents and businesses in this area; and
- c) Provide a single operational plan and point of coordination, management and command in the delivery of fire, rescue, and first responder services to the residents in the southern section of the County and the City.

In September 2012, the County issued a Request for Proposals (RFP) for a “Fire District Consolidation Feasibility Study” (Study). The purpose of the Study was to determine if there were alternate methods to effectively organize and provide efficient fire protection services countywide. Further, the Study examined opportunities for cost efficiencies and provision of a consistent level of service throughout the County.

Based on the recommendations of the Study, staff research and discussions between County and City staff, a memorandum dated October 5, 2017 was written in which the City and County came to broad agreement on principles for Fire Services consolidation. On October 10, 2017, the Joint County/City Committee requested that a draft Interlocal Agreement for consolidation of fire and first responder services in the southern portion of Durham County be drafted for consideration by the County and the City.

THEREFORE, the Parties agree as follows:

ARTICLE 1 PURPOSE

The purpose of this Agreement is to set forth the responsibilities of the Parties with respect to the provision of fire, first responder and rescue services, and other fire protection related services, as expressly provided for in this Agreement (collectively, the Fire Services), by the DFD within the jurisdictional boundaries of the DCFR Fire Rescue Service Tax District. Beyond the specified Fire Services, this Agreement also describes, among other things, the Parties’ obligations with respect to personnel, rolling stock, property, fire stations lease, and financial commitments during the term of the Agreement. This Agreement is not intended to establish, and does not establish, a separate governmental entity for the performance of any function. By entering this Agreement, the City does not assume, and shall not be responsible for, any financial or other liabilities that may currently exist as of the Effective Date of this Agreement, whether known or unknown, with respect to DCFR.

ARTICLE 2 DEFINITIONS

For purposes of this Agreement the terms listed below shall have the following meaning:

Anniversary Date - The day of employment by the City of transferred DCFR employees, which shall be July 1, 2018.

Breach – Either party is not adhering to the Agreement. The Agreement is considered broken and the non-breaching party is entitled to either leave the Agreement in place and enforcing its terms, or to declare the Agreement terminated and seek remedies.

DCFR - Durham County Fire Rescue.

DCFR District – the Durham County Fire Rescue Service Tax District. The defined area within the County in which the County has levied an additional property tax in order to provide fire, first responder and rescue services. A service district is not a municipal corporation and has no independent authority. It is established and maintained by the County and is under the control of the County Board of Commissioners.

Default - An event of nonperformance by either party that the party has some time to correct according to procedures specified in the Agreement before the other party may terminate the Agreement for breach.

DFD – City of Durham Fire Department

Effective Date - The date the provisions of this Agreement shall take effect.

FICA - Federal Insurance Contribution Act is a United States federal payroll (or employment) tax imposed on both employees and employers to fund Social Security and Medicare.

First Responder Services – Basic and/or advanced emergency medical services provided by Emergency Medical Technicians (EMT).

Fire Services – Fire protection, first responder and rescue services, and other fire protection related services.

Insurance Services Office (ISO) - A source of information about property/casualty insurance risk. The ISO classification determines the price of fire insurance for homeowners and businesses, based on a 1 to 10 scale.

Lateral Transfer - The employment movement of a DCFR employee to DFD.

Leave Accruals - Vacation and sick leave earned by employees during the course of employment.

Rescue Services – Vehicle extrication, high angle, confined space, land search and rescue services provided by fire service personnel.

Rolling Stock - Wheeled vehicles used to provide Fire Services.

TR-1 Form – The TR-1 Report is used to determine the allocation of taxes collected by the North Carolina Department of Revenue that is distributed back to the County.

ARTICLE 3

TERM AND TERMINATION

3.1 Term: The term of this Agreement shall commence upon the Effective Date, and extend for an initial term of forty (40) years, ending at midnight, June 30, 2058. The Agreement shall renew for additional successive forty (40) year terms thereafter, unless terminated in writing by the Parties pursuant to the provisions of section 3.2.

3.2 Termination: This Agreement may be terminated by either Party giving written notice of termination at least two (2) years before the date of termination of the initial forty (40) year term, or of any successive 40 year term thereafter. The date of termination shall be June 30 of the relevant fiscal year.

Either party may terminate this Agreement for a material breach of the terms of this Agreement or default by the other Party, but not before the non-breaching or non-defaulting Party gives the other written notice of the material breach or default and an opportunity to cure the material breach or default. For purposes of this Agreement, breach and default are defined in Article 2.

3.3 Remedies:

(1) **Remedies Available to the County** – If the Agreement is terminated for material breach or default by the City, the County's remedies shall include any or all of the following, as may be applicable at the time of termination:

(a) The City shall return to the County, at no cost, all fire trucks, equipment, and apparatus less than fifteen (15) years old on the date of termination that were purchased by the DCFR District.

(b) The City shall pay to the County an amount of cash determined and agreed to by the Parties to cover the expense of staff and facilities necessary to immediately reestablish fire protection, rescue and first responder services to the DCFR District.

(2) **Remedies Available to the City** – If the Agreement is terminated for material breach or default by the County, the County shall pay all funds due the City for providing Fire Services for two (2) years after the date of termination, to be paid annually over a two (2) year period. In addition, the trucks, equipment, apparatus, buildings and real property serving the DCFR District at the time of termination will be apportioned between the City and the County in a manner deemed equitable by the City Council and the Board of County Commissioners.

ARTICLE 4

FIRE, RESCUE AND FIRST RESPONDER SERVICES

The Parties agree that DFD will provide Fire Services within the jurisdictional boundaries of the DCFR District during the Term of this Agreement at a level and standard meeting or exceeding that existing on the Effective Date of this Agreement. At the Effective Date, DCFR's ISO Rating is 3/9E and the requirement for turn-out time pursuant to the National Fire Protection

Association (NFPA) Standard 1710, Chapter 4 section 4.1.2.1 (2), is eighty (80) seconds for fire/rescue calls and sixty (60) seconds for first responder services in metropolitan departments, and pursuant to Chapter 4 Section 4.3.3, turn-out time is ninety (90) seconds for fire/rescue calls and sixty (60) seconds for first responder calls in a rural staffed department. The level of fire suppression service will be equivalent to that provided to City residents (Durham Service Level) and shall be substantially consistent with the Response Plan, attached to and incorporated herein as Appendix B-1, and the Travel Response Standards, attached to and incorporated herein as Appendix B-2. The Response Plan and Travel Response Standards may be amended from time-to-time, at the discretion of the Durham Fire Chief in consultation with Durham County's Fire Marshal. A copy of any amended Response Plan and Travel Response Standards will be sent to the County for review.

County shall not be liable for any claims, judgments, costs, damages, demands, liabilities, obligations, fines, penalties, settlements or expenses resulting from acts of negligence or intentional torts committed by DFD while performing the services under this Agreement.

ARTICLE 5

HUMAN RESOURCES

TRANSFER OF DCFR PERSONNEL FROM THE COUNTY TO THE CITY

5.1 Lateral Transfer: Up to fifty-three (53) DCFR personnel, who: (i) are currently employed full-time by the County, (ii) are medically cleared for employment with DFD, and (iii) pass the DFD-approved Physical Ability Test (PAT) prior to employment, and (iv) accept offers tendered by the City of Durham in accordance with the terms of this Agreement, shall become personnel of DFD and shall operate under the direction and control of DFD. Such personnel shall receive lateral transfers to DFD at their qualified rank within the DFD, however, that rank shall not exceed the rank of Fire Captain. DCFR medical screening and PAT will be accepted by DFD if it occurred within one (1) year prior to the effective date of transfer.

After obtaining written consent from the employee, the personnel file will be provided from the County to the City, and a review will be made by the City of the personnel file of each DCFR employee proposed for lateral transfer to confirm that the employee either meets the current minimum qualifications (certifications and education) of the position or rank into which he or she will transfer, or that the employee will be able to complete the minimum certifications by January 1, 2019, and educational requirements by January 1, 2021. At the discretion of the Durham Fire Chief, the educational timeline for individuals may be extended based on unforeseen circumstances. In addition, lateral appointments for Fire Captain must successfully complete a joint City/County assessment center comprised of a fire problem and a personnel problem, or the employee shall be reduced in rank to the next highest rank for which he or she qualifies. Lateral appointments for Fire Driver must successfully complete the Fire Driver Performance Readiness Examination, or be reduced in rank to Firefighter. All lateral appointments will ultimately be at the discretion of the Durham Fire Chief, in consultation with the County's Fire Marshal. Employees who transfer to DFD shall be governed by City policies after the date of transfer, except as specifically stated above. All references in this Agreement

to “City policies” shall mean City policies on the effective date of transfer, and as those policies may be revised from time-to-time during employment.

5.2 Pre-Employment Screening: All transferred County fire personnel will have a background check conducted, a physical if one has not been conducted within one (1) year prior to the effective date of transfer, and a drug test completed in accordance with City policy, and before starting in his or her new role with the DFD. Offers of employment will be contingent upon successful completion of a background check, a physical if required, and drug testing. If any negative indication is found on a background check, a physical or drug test, DFD will follow the City’s policies to resolve the issue, and the City may exercise its prerogative to rescind the job offer.

5.3 Personnel Records: Copies of all personnel records for the DCFR employees proposed for transfer will be provided to the City Department of Human Resources within thirty (30) days of the Effective Date. All copies of personnel records will be provided intact without deletions or omissions. The City will assume sole custodial responsibility for these records, and will maintain them in accordance with HRM-210-1.

5.4 Personnel Actions: The City will consider the conduct of DCFR employees prior to their transfer to DFD. Documentation of all personnel actions or disciplinary actions involving any DCFR employees proposed for transfer will be forwarded to and maintained by City of Durham Human Resources. Personnel actions identified in the documentation supplied by Section 5.4 that are over eighteen (18) months in the past from the Effective Date will not be the basis for personnel discipline by the City.

5.5 Anniversary Date: The employment anniversary dates for transferred DCFR employees for purposes of their employment with the City will be July 1, 2018, which will be the start date for the six (6)-month performance probationary period. The employee’s next merit review will take place at one year from transfer into the DFD.

5.6 Probationary Period: It is the policy of the City of Durham to assure that all new employees to the organization are assessed during the six (6) month new hire probationary period to determine their suitability for regular employee status. During the probationary period, issues relating to conduct and attendance can be considered cause for termination based on HRM-313. The HRM-313 policy is specifically modified for the initial DCFR transfer to DFD by agreeing that performance issues that occur during the probationary period will be remediated through a performance improvement plan and by an extension of the probationary period for an additional three (3) months. If at the end of nine (9) months the employee’s performance is still not considered satisfactory, the employee may be terminated.

5.7 Administration: All DCFR personnel transferred to City employment will be subject to City administrative policies and procedures as well as DFD internal policies and procedures as of the Effective Date of the Agreement.

5.8 Promotions: Promotional eligibility for DCFR employees transferred to DFD will be in accordance with DFD policies. DCFR personnel will be given up to two (2) years credit for time spent in their current positions when they transfer to DFD. This credit will be applied toward the time in grade requirement for promotion to the next rank in the DFD. Future time shall be calculated from the date of hire with DFD.

5.9 Assignments: Station assignment of DCFR employees transferred to DFD shall be at the discretion of the Durham Fire Chief or the Chief's designee. Personnel will be assigned in a manner which provides coverage to the DCFR Fire Service District by rural firefighting experienced personnel, transitional stability for DCFR personnel, and the equitable integration into the City's firefighting force as they become employees of DFD.

5.10 Compensation: DCFR personnel will be placed on a pay step within that DFD pay grade that is closest to, without being less than, their current salary.

5.11 DCFR Personnel to Gain City Employment and Retirement Benefits: DCFR employees transferred to DFD shall enjoy the same compensation, incentives, benefits and employment policies as all other City of Durham Fire Department employees. City firefighters do not pay FICA tax. Instead, firefighters may set up a deferred compensation plan, with the City contributing a 5% match when the employee contributes at least 5% of his or her salary.

5.12 Leave Accruals: DCFR employees transferred to DFD will retain all vacation and sick leave that has accrued up to the transfer date, and will commence accruals as of the transfer date based on the rate in the City's leave accrual policy for their years of service, including years with the County. See Appendices B-1 and B-2, attached to and incorporated herein. DFD shall provide two additional vacation slots per shift for the remainder of the 2018 calendar year specifically so that transferred DCFR employees may enter their existing vacation time, upon execution of this Agreement. After this one-time process has been completed, all employees will follow the DFD vacation request process.

5.13 Retirement Health Savings: DCFR employees transferred to DFD with a Durham County hire date of July 1, 2008 and after will be automatically enrolled into a Retirement Health Savings (RHS) Account. Employees must contribute 2% of salary per pay period into the RHS Account, up to an annual maximum of \$1,000. The City's contribution to this account is presently \$35.00 per pay period. Employees are eligible to collect the employer-contributed portion upon retirement, after the benefit has vested in accordance with City policy.

5.14 Retiree Health Insurance Plan: Eligibility to participate in the City's retiree insurance coverage will be based on the DCFR employee hire date honored by the County. Transferred DCFR employees with a hire date prior to July 1, 2008 will be included in the City's retiree insurance plan. The County agrees to pay the City \$100,000 per year for the first ten (10) years of the Agreement, for a total contribution of \$1,000,000 to assist in funding the retiree health insurance benefit for eligible transferred DCFR employees. This payment will not be included in years 11-40, or any subsequent extensions of this Agreement. In turn the City commits to

funding the remainder of the retiree health benefit for the eligible DCFR employees and will not seek any additional compensation from the County for this benefit. The \$100,000 annual payment will be added to the annual Agreement payment after the annexation and valuation updates have been completed (referenced in sections 7.1 and 7.2), and will be due to the City on or before the last payment date of the fiscal year.

5.15: New Non-Sworn Personnel: Under this Agreement, the County and City agree to the following funding approach for four (4) new non-sworn personnel and salary increase for three (3) DFD Division Chiefs:

1. Facility Maintenance Technician (1 FTE - 85% City/15% County cost share)
2. Fire Supply Officer (1 FTE - 85% City/15% County cost share)
3. Fire Equipment Mechanics (2 FTEs – 100% County)
4. DFD Division Chiefs (3 FTEs – 25% of salary increase for additional duties at County expense)

ARTICLE 6 TRAINING

6.1 Prior Training: Transferred DCFR personnel will be given full credit for all training and certification fully documented and successfully completed prior to the transfer date.

6.2 New Employee Training: DCFR employees transferred to DFD will be required to complete the City's New Employee Orientation, including the following training:

- Substance Abuse
- Ethics
- HIPAA
- Americans with Disability Act
- Anti-Harassment and Workplace Violence

6.3 Firefighter Training: Transferred DCFR employees at the rank of Firefighter will be assigned to a Field Training Officer and must complete the DFD Field Training program.

6.4 Driver/Relief Driver Training: Transferred DCFR employees at the rank of Driver or Relief Driver will be required to complete the DFD Relief Driver course.

6.5 Officer Training: Transferred DCFR employees at the rank of Fire Captain will be required to complete the DFD Officer Field-Training program.

ARTICLE 7

COST OF SERVICES AND PAYMENT

7.1 Annual Payment for Services: In order for the City to provide Fire Services in the DCFR District, the Parties agree to the annual payment schedule provided in Appendix A. It is the intent of the County to use the annual tax revenue collected from the District to fund the scheduled payments included in Appendix A, except as adjusted by Sections 7.2 and 7.3. Monthly payments in the amount of the District's net actual revenues from the previous month will be made to the City on or about the 20th of every month, and no later than the end of the month, starting August 20, 2018. Monthly payments will continue until the annual payment is paid in full by the end of each fiscal year.

Any tax revenue collected from the District not disbursed as part of the annual payment to the City shall remain in a County Fund Balance account and shall become the property of the County upon termination of this Agreement. Any funds remaining in the County Fund Balance Account may be used by the County to reestablish fire protection and first responder services in the District upon termination of this Agreement.

By January 31st of each year, the City shall provide the County with a written report documenting compliance with the service level requirements of this Agreement. The report shall include the current ISO rating, number of calls, missed or non-response calls, chute times and response times per National Fire Protection Association (NFPA) 1710 for those DFD stations covering the DCFR District. In addition, the City shall inform the County in writing of any material findings related to DFD or internal audit issues that have fiscal implications to the DCFR District within thirty (30) days of being identified. The compliance report and any audit related issues requiring notification to the County shall be provided to the County's Fire Marshal.

For all funds and services being provided under this Agreement, the County shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to the performance of this Agreement. Reviews may take place bi-annually at times and locations mutually agreed upon by both parties. Notwithstanding the foregoing, the City must make materials available within two (2) weeks of the request.

7.2 Annexation Adjustment: An annexation adjustment reducing the County's annual payment as stated in Appendix A shall take effect during the second year (FY19/20) of the Agreement and shall continue for the duration of the Agreement. All parcels annexed into the City for the previous calendar year that are subject to City taxation as of January 1, will be reported to the County Budget Department by January 31st of each year. The annual payment listed on Appendix A shall be reduced by the January 1 valuation of the previous calendar year's annexed parcels multiplied by the rate of the DCFR District tax (being solely the tax for Fire Services, and not including other property taxes) for that previous calendar year. The running totals for all annexations already reduced from a previous year's expenditure will be multiplied by the percentage change of overall real property valuation in Durham County (less any valuation attributed to parcels located in the Research Triangle Park) in the current calendar year as compared to the prior calendar years indicated on the annual TR-1 report. The County and the

City shall agree on the net recalculated payment determined by the annexation adjustment formula provided below before annual payments are provided to the City.

The following illustrates the annual calculations. Note the tax rate used is not the actual BOCC approved tax rate, and is used for EXAMPLE only. In case of conflict between the formula for payment to the City described above compared to the method of calculations shown below, the method of calculations below shall have priority. Appendix A shall control in priority, should there be ambiguity or conflict between its provisions and those in this section.

Year 1 Scheduled Payment (Appendix A) = \$4,048,679

Year 1 Net Recalculated Payment = \$4,048,679

Year 1 Annexations Valuation (A) = \$2,000,000

Year 1 DCFR Tax Rate (B) = \$0.14 / \$100 Valuation - **Note this is not an actual tax rate (illustrative purposes only)*

Year 1 District Annexation Revenue (C) = (A/100)*B = (\$2,000,000/\$100)*\$0.14 = \$2,800

Year 2 Scheduled Payment (Appendix A) (D) = \$4,022,264

Year 2 Net Recalculated Payment (E) = D-C = \$4,022,264 - \$2,800 = \$4,019,464

Year 2 Annexations Valuation (F) = \$500,000

Year 2 DCFR Tax Rate (G) = \$0.14/\$100 Valuation

Year 2 District Annexation Revenue (H) = (F/100)*G = (\$500,000/\$100)*\$0.14 = \$700

Year 2 Valuation Difference for Durham County excluding RTP (I) = 3.33%

Year 3 Valuation Growth of prior annexations (J) = ((C+H)*(1+I)) = (\$2,800)*(1+3.33%) = \$2,893

Year 3 Scheduled Payment (Appendix A) (K) = \$4,253,902

Year 3 Net Recalculated Payment (L) = K-(H+J) = \$4,253,902-(\$2,893 + 700) = \$4,250,309

After year ten (10) of the Agreement, Appendix A payments to the City for years eleven (11) and beyond shall be increased annually by the percentage change in the CPI-U for the Durham/Chapel Hill MSA as published by the Federal Bureau of Labor Statistics. If CPI-U has decreased, no change shall be applied to the annual payment. This CPI-U adjustment shall be applied prior to annexation recalculations, if any.

7.3 Maintenance of Resources: Both Parties acknowledge that it is difficult to forecast the cost of adequately providing fire and first responder services over the forty (40) year term anticipated by this Agreement. As a mechanism to respond to substantial changes in density or property specific to the DCFR District that may not be reasonably anticipated, the Parties agree to rely upon the accreditation evaluation provided by The Center for Public Safety Excellence at five (5) year intervals. The accreditation team will review the current level of service and will determine if deficiencies exist related to the provision of services in accordance with industry best practices. Should the accreditation team identify such deficiencies and if such deficiencies did not result from any reduction in services or employees serving the DCFR District, or if the deficiencies can be directly attributed to the remaining parcels in the DCFR District, the Parties agree to hire a consultant mutually agreeable to them to identify the costs of remediating the deficiencies, and the cost of the consultant shall be equally split between the Parties. If

deficiencies are identified that are directly attributed to the remaining parcels in the DCFR District, the cost of fixing the deficiencies will be added to the County's annual payment.

7.4 Chatham County Mutual Aid Agreement: Durham County currently is part of a mutual aid agreement with Chatham County, and hereby assigns all rights and responsibilities that it has under that agreement to the City of Durham, which accepts that assignment. The revenue generated by the Chatham County agreement and the cost of service of fulfilling the County's responsibilities under it have both been accounted for by the Parties in deriving the annual payment from the County to the City under this Agreement, with a fixed amount of \$350,000 per year subtracted from the amount due to the City per this Agreement. The City shall assume all responsibilities for fulfilling the mutual aid agreement with Chatham County, and shall be free to renegotiate it separately from this Agreement; however, this will not affect the annual reduction of \$350,000 incorporated into this Agreement's annual payment from the County to the City. The obligations and payment under the Chatham County mutual aid agreement and any other mutual aid agreements that the City undertakes do not impact the Annual Payments due to the City under this Agreement.

7.5 Future Purchases of Rolling Stock: The County agrees to pay replacement costs of the following rolling stock used in the DCFR District, as included in the Agreement financial model set forth in Appendix A:

- E-411, 2008 Sutphen 75' tower, HS4405
- DC803, 2007 Ford Expedition
- T-415, 1987 Sutphen Deluge HS2100 (to be replaced with a 3000 gallon tanker)
- E-421, Sutphen 1000 gallon Custom HS3772 (to be replaced by a County 3000 gallon tanker)
- NEW, Service Truck (50% cost share)
- T-83, 2005 Freightliner US Tanker, 3000 gallon Tanker
- T-82, 2006 Freightliner US Tanker, 3000 gallon Tanker
- Brush 83, 2004 Ford Brush Truck (remount on new chassis)
- Old B-100, 2009 Chevrolet Tahoe
- R-81, 2006 Spartan Heavy Rescue (50% cost share)
- DC802, 2007 Ford F150 Super Crew

ARTICLE 8

TRANSFER OF ASSETS, ROLLING STOCK, EQUIPMENT AND APPARATUS

8.1 Transfer and Convey: The County hereby agrees to transfer and convey ownership of all operationally necessary and pre-identified assets, rolling stock, equipment, and apparatus to the City in order for the City to provide fire protection services within the DCFR Fire District. Both parties agree that all assets, rolling stock, equipment, and apparatus shall be located so that they support training, fire protection and first responder services in the DCFR District.

Durham County shall deliver to the Durham Fire Chief: (a) duly executed bills of sale conveying unencumbered title to all rights in the rolling stock listed in Section 8.3 and equipment listed in **Appendix D** attached to and incorporated herein; and (b) with respect to vehicles, duly endorsed certificates of title transferring unencumbered vehicular title to the City.

8.2 Effective Date of Transfer and Convey: All assets, rolling stock, equipment, and apparatus shall be transferred and conveyed by the County to the City within thirty (30) days following the Effective Date of this Agreement.

8.3 Rolling Stock: The County hereby grants and conveys to the City all of its rights, title and interest, free of any encumbrances, in the rolling stock currently owned by the County as listed below. Other rolling stock owned by the County not identified below, including the equipment on that rolling stock, will remain the property of the County.:

- E-411, 2008 Sutphen 75' tower, HS4405 – Front line
- Apparatus ordered in FY18 (as part of a combined City/County spec)
 - One Sutphen Tanker on order in FY17 (November 2018 est. delivery)
 - Two Sutphen Engines (August 2018 est. delivery)
- Battalion 81, 2017 Dodge Durango
- DC803, 2007 Ford Expedition
- Brush 417, 1988 Chevrolet Brush Truck
- T-415, 1987 Sutphen Deluge HS2100
- E-421, Sutphen 1000 gallon Custom HS3772
- R-414, 1991 Sutphen Rescue HS2548
- T-83, 2005 Freightliner US Tanker, 3000 gallon Tanker
- T-82, 2006 Freightliner US Tanker, 3000 gallon Tanker
- Brush 83, 2004 Ford Brush Truck
- B-100, 2009 Chevrolet Tahoe
- E-83, 2002 Chevrolet E-One Engine
- E-81, 2002 Chevrolet E-One Reserve Engine
- R-81, 2006 Spartan Heavy Rescue
- E-83, 1993 Chevrolet E-One Quint 75' Stick
- A-83, 2001 Freightliner Mobile Air Support Truck
- DC802, 2007 Ford F150 Super Crew

8.4 Self-Contained Breathing Apparatus (SCBA): As part of this Agreement, the County shall reimburse the City for purchase of 24 SCBA units that will be used to replace the spare SCBA units required for initial consolidated Fire Services operations. The costs of the units have been included in the year 1 payments shown in Appendix A, and shall be a one-time cost to the County.

ARTICLE 9 FIRE STATION FACILITIES

9.1 Lease: The County shall lease to the City two existing fire stations located at 1409 Seaton Road, Durham, NC 27713 and 4716 Old Page Road, Durham, NC 27703. The form for the leases appears as **Appendix E-1 and E-2**, attached to and incorporated herein, to be executed separately from this Agreement. There shall be a zero dollar lease to the City for its occupancy and use of these two stations, and the City agrees to provide the appropriate level of maintenance to the stations in consultation with the County during the lease period. The 4716 Old Page Road lease agreement shall provide that fuel at the station's fuel pumps will be provided and used exclusively by the County, and County emergency responders and staff shall have 24-hour access to the pumps.

9.2 Construction of Two Fire Stations: The City and the County shall share in the costs of constructing two new stations, both on City-owned land: Fire Station 18, located at 6911-6919 Herndon Road, will be constructed in 2020, and Fire Station 19 to be built in 2023, located in the vicinity of Davis Drive and NC Highway 54. The County will pay its share for the cost of the land as part of the cost-sharing specified below. The anticipated locations of stations 17, 18 and 19 are shown in Appendix F, incorporated herein. Both will be four-bay co-located stations, built to accommodate both DFD and Durham County Emergency Medical Services (DCEMS). Stations 18 and 19 will be similar in design to Fire Station 17, with adaptations as needed for site conditions and service level requirements. The City shall contract for and oversee construction of these stations.

The cost sharing model for the land and construction of Fire Stations 18 and 19 has been developed by identifying the total number of land parcels in each response district, and then determining the percentage of the parcels in the City and the percentage of parcels in the County served by the DCFR District. For the proposed Station 18 response district, 18% of parcels are served by the DCFR District and 82% are in the City. For the proposed Station 19 response district, 8% of parcels are served by the DCFR District and 92% are in the City. This cost sharing model does not preclude the City from changing either station's response district in the future based on operational needs. The funding model for Stations 18 and 19 includes co-location with Durham County Emergency Medical Services (EMS) at each station, with an additional cost to the County for housing EMS.

Total Station Project Cost Allocation

Co-location with EMS: Cost – 24%

Sub-total Fire Services cost to be shared by County and City – 76%

Station 18 cost share of the Fire Services 76% portion: 18% County / 82% City

Station 19 cost share of the Fire Services 76% portion: 8% County / 92% City

Upon completion of Stations 18 and 19, the City shall separately invoice the County for the County's project percentage. The County's contributions for Station 18 and 19 shall remain separate from the County's annual payments specified in Appendix A.

If the stations are not constructed, the County is not obligated to pay the County's contribution to the project. The County is not obligated to share in the cost of construction of new fire stations after construction of Fire Stations 18 and 19, notwithstanding Section 7.3.

If the City ever contemplates selling or vacating Station 18 or Station 19, the City shall first be required to negotiate in good faith with the County for the sale, lease, or exchange of the stations pursuant to G.S. 160A-274 before offering them to a third party.

ARTICLE 10 NOTICES

10.1 Notice Requirements: All notices required hereunder shall be deemed properly delivered when personally delivered to the Parties at the addresses listed below, or when sent via U.S. Mail, certified with return receipt requested, (notices being deemed given when so deposited in the U.S. Mail):

City of Durham
Attn: City Manager
101 City Hall Plaza
Durham, North Carolina 27701

Durham County
Attn: County Manager
200 East Main Street
Durham, North Carolina 27701

10.2 Date Notice Deemed Given: A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

ARTICLE 11 MISCELLANEOUS

11.1 Force Majeure: In the event that either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of the following: labor dispute, including strike and lockout; unavailability of essential materials, riot; epidemic; war, extreme weather events, fire; explosion; condemnation; accident; delays or default of the other party, then performance of such act shall be excused for the period of the delay, and thereafter the period for the performance of any such act shall be extended for a period equivalent to the

period of such delay. Both Parties must use commercially reasonable efforts to perform despite said events and commercially reasonable efforts to prevent or cure the effects of said event insofar as it prevents performance.

11.2 Cure Period: No default by either party shall result in a termination or limitation of any rights of such party unless and until the other party notifies the defaulting party in writing of said default, and the defaulting party fails to cure said default within sixty (60) days after the receipt of said written notice, provided, however, in the event of a non-monetary default which cannot, by its nature, be cured within such sixty (60) day period, if the defaulting party commences and diligently pursues a cure of such default promptly within the initial sixty (60) day cure period, then the other party shall not exercise its remedies or limit the rights of the defaulting party unless such non-monetary default remains uncured for more than one hundred and twenty (120) days after the initial delivery of the other party's original default notice.

11.3 Governing Law; Jurisdiction: This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to any construction arising from the application of conflicts or choice of law principles, and without regard to any construction arising by virtue of the negotiation or the persons who drafted this Agreement. The Parties consent to the exclusive jurisdiction of the Superior Court of Durham County, North Carolina or the United States District Court for the Middle District of North Carolina, or of both as applicable in the circumstance. The Parties irrevocably submit to such exclusive jurisdiction.

11.4 Representations and Warranties of the Parties: Each of the parties, and each person executing this Agreement on behalf thereof, represent and warrant, as applicable, that (1) such party or person has the full power and authority to enter into this Agreement and the agreements or instruments referred to herein, to execute them on behalf of the party indicated on the signature page thereof, and to perform the obligations hereunder and thereunder, (2) such party is acting on its own behalf and on behalf of its successors and assigns, (3) this Agreement and the other agreements referenced herein are the valid and binding obligations of such party, enforceable against it in accordance with their terms, (4) entering into this Agreement and the other agreements referenced herein does not conflict with any other agreements entered into by either party, and (5) the execution, delivery and performance of this Agreement and other agreements referenced herein has been duly and validly authorized by all necessary governmental action on its part. The County represents and warrants to the City that this Agreement and the cost sharing payments contemplated hereunder have been pre-audited to ensure compliance with the budgetary accounting requirements (if any) that apply thereto, and that the County and City shall use its best efforts to ensure that all necessary sums shall be fully appropriated and allocated, and made available to perform the terms and conditions of this Agreement.

11.5. Responsibilities of Parties: Neither party agrees to indemnify or hold harmless the other party in the performance of this Agreement. However, to the extent permitted by law, each party agrees to be responsible for its own acts or omissions and any and all claims,

liabilities, injuries, suits, and demands and expenditures of all kinds which may result from or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by that party, its employees, subcontractors, or representatives, in the performance or omission of any act of responsibility of that party under this Agreement. In the event that a claim is made against both Parties, it is the intent of both Parties to cooperate in the defense of said claim. However, either party shall have the right to take any and all actions they believes necessary to protect its interest, including, without limitation, the right to enforce the obligations of this Agreement against the other party and the right to recover damages caused by the other party arising out of the performance or nonperformance of this Agreement. This provision shall survive the termination of this Agreement. Notwithstanding the above, neither Party waives its governmental immunity, nor any other immunity granted by law, nor do both Parties reserve the same unto themselves.

The City of Durham is self-insured for all losses up to and including a retention amount of \$1,000,000. An excess liability policy for losses over \$1,000,000 includes a North Carolina Governmental Immunity Endorsement, confirming that the policy provides coverage only for occurrences, wrongful acts, employment practice liability wrongful acts, or employee benefit wrongful acts for which the defense of governmental immunity is clearly not applicable.

11.6 E-Verify: Both Parties shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if either party utilizes a subcontractor to provide services under this Agreement, they shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes as well. Either party shall verify, by affidavit, compliance of the terms of this section upon request by the other party.

11.7 Cooperation and Compliance: The Parties agree to cooperate with each other and provide all necessary documentation, certificates and consents and to take all necessary action in order to satisfy the terms and conditions hereof and applicable laws, regulations and agreements.

11.8 Counterparts: This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be as effective as delivery of a manually executed original counterpart of this Agreement

11.9 Entire Agreement, Amendment; Construction: This Agreement, together with the Appendixes attached hereto, contains the entire Agreement between the Parties as to the subject matter referenced herein, and supersedes all prior agreements, understandings or undertakings (whether oral, written, electronic or otherwise) between the Parties with respect to the subject matter hereof. No amendment may be made to this Agreement except with the prior written consent of all Parties hereto. The section titles and headings herein are for convenience of reference only and do not define, modify or limit any of the terms and provisions hereof.

11.10 Authority: Both Parties hereby respectively confirm that the individuals executing this Agreement are authorized to execute this Agreement and to bind the respective entities to the terms contained herein. Both Parties confirm they have read this Agreement and, conferred with counsel, and fully understand its contents.

11.11 Dispute Resolution: To possibly prevent litigation, it is agreed by the Parties that any claim or dispute between them shall be submitted to the City or County Manager. Both parties agree that any unresolved dispute shall be mediated pursuant to the Rules of Mediation as used in the Superior Court of North Carolina. The Parties must agree on a Mediator. Mediation shall be held within forty-five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information or allow the Parties to provide additional information. The Mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this provision, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, Parties to the dispute shall act in good faith to maintain the services required under this Agreement. The costs of mediation shall be divided equally between parties. If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the Parties may seek resolution in the General Court of Justice in the County of Durham and the State of North Carolina.

[Deliberately left blank. Execution pages follow.]

IN WITNESS WHEREOF, the Parties, by their duly authorized signatories, hereby enter into this Agreement, effective as of the date first set forth above.

DURHAM COUNTY:

BY: [Signature]
WENDELL M. DAVIS, COUNTY MANAGER

ATTEST: [Signature]
TERRI LEA HUGIE, CLERK TO THE BOARD
Monica Toomer Deputy clerk

THIS INSTRUMENT HAS BEEN PRE-AUDITED IN THE MANNER REQUIRED BY THE LOCAL GOVERNMENT BUDGET AND FISCAL BUDGET CONTROL ACT.

[Signature]
SUSAN TEZAI, DURHAM COUNTY CHIEF FINANCIAL OFFICER

NORTH CAROLINA

ACKNOWLEDGMENT OF COUNTY OF DURHAM

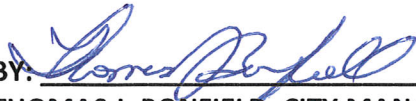
COUNTY of DURHAM

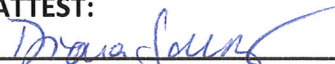
I, a Notary Public in and for the aforesaid County and State certify that Monica Toomer personally appeared before me this day, and acknowledged that he or she is the Deputy Clerk to the Board of Commissioners for the County of Durham, a N. C. political subdivision, and that by authority duly given and as the act of the County, the foregoing agreement with the City of Durham was duly signed in its corporate name by the County Manager, sealed with its corporate seal, and attested by its said Clerk. This the 29th day of June, 2018

My commission expires: November 11, 2020

[Signature]
Notary Public
TANIA DE LOS SANTOS
NOTARY
PUBLIC
WAKE COUNTY, NC

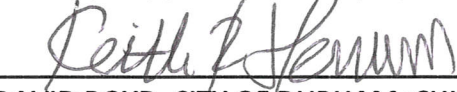
CITY OF DURHAM:

BY: 
THOMAS J. BONFIELD, CITY MANAGER

ATTEST:

DIANA SCHREIBER, CITY CLERK



THIS INSTRUMENT HAS BEEN PRE-AUDITED IN THE MANNER REQUIRED BY
THE LOCAL GOVERNMENT BUDGET AND FISCAL BUDGET CONTROL ACT.


DAVID BOYD, CITY OF DURHAM, CHIEF FINANCIAL OFFICER
Keith R. Herrmann Deputy