

THIS CONTRACT, made and entered into this 1st day of July, 1989, by and between the COUNTY OF CUMBERLAND, a body politic and corporate of the State of North Carolina, hereinafter referred to as the COUNTY, party of the first part, and the **STONE POINT VOLUNTEER FIRE DEPARTMENT**, a private non-profit corporation incorporated under the laws of North Carolina, with principal offices in Cumberland County, North Carolina, hereinafter referred to as the FIRE DEPARTMENT, party of the second part;

W I T N E S S E T H

WHEREAS, Rural Fire Protection Districts have been duly and properly created in Cumberland County under the provisions of North Carolina General Statutes N.C.G.S. Chapter 69, Article 3A, in order to provide fire protection services to areas encompassed by such districts;

WHEREAS, within each Rural Fire Protection District, the Board of County Commissioners have designated one or more areas of responsibility (each hereinafter referred to as FIRE DISTRICTS), each of which is intended to be served by one Fire Department;

WHEREAS, the Board of County Commissioners, under the provisions of N.C.G.S. Section 69-25.5, may provide fire protection services in rural fire protection districts by contract with one or more private non-profit volunteer fire departments and desires to enter into a continuing contract under the provisions of N.C.G.S. Section 153A-13, with the FIRE DEPARTMENT to provide fire protection services in the FIRE DISTRICT identified in said contract;

WHEREAS, the Board of County Commissioners of the COUNTY is authorized and directed under the provisions of N.C.G.S. Section 69-25.4, to levy and collect taxes from year-to-year in each Rural Fire Protection District in such amount as it may deem necessary, not exceeding Fifteen (15) Cents on each One Hundred Dollars (\$100) valuation of property in said Districts, and shall keep and administer the same in a separate and special trust fund (hereinafter the Trust Fund) to be used only for furnishing fire protection services within the FIRE DISTRICTS;

WHEREAS, the Board of County Commissioners is vested by N.C.G.S. Section 69-25.4 with discretion as to which rate of tax to levy within the Rural Fire Protection Districts and, in accordance with the provisions of N.C.G.S. Section 159-14, must set that rate based on an annual budget estimate setting forth the monetary requirements for providing fire protection services that year in the FIRE DISTRICTS;

WHEREAS, the Board of Commissioners of the County, also acting pursuant to N.C.G.S. Section 159-14, as the governing body of each Rural Fire Protection District, must adopt an annual budget ordinance appropriating tax monies levied and collected from the Districts and authorizing transfers and expenditures from the Trust Fund only for fire protection services in the FIRE DISTRICTS as specified in the continuing contracts; and

WHEREAS, the COUNTY desires to standardize its contractual arrangements with all rural volunteer fire departments in the COUNTY;

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained and the mutual benefits to be

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THE COUNTY ATTORNEY  
County of Cumberland  
P. O. Drawer 1629  
Fayetteville, N. C. 28302-9990



derived therefrom, the parties hereto promise and agree as follows:

I.

The FIRE DEPARTMENT promises and agrees as follows:

1. Scope of Service:

a. Territorial Responsibility: The FIRE DEPARTMENT shall provide the foregoing services within the boundaries of the LAKE UPCHURCH and STONEY POINT FIRE DISTRICT as defined in the map of the FIRE DISTRICT on record in the Department of Land Records Management of Cumberland County.

b. Service Responsibility:

(1) The primary responsibility of the FIRE DEPARTMENT shall be to furnish adequate fire protection as determined by the North Carolina Department of Insurance, (Division of Fire and Rescue Services), other pertinent federal, state and local laws and regulations, and this contract for all persons and property located within its area of responsibility. Such service shall include, as a minimum, responses to releases or potential releases of hazardous substances as part of the initial response to a fire protection site for the purpose of protecting nearby persons, property, or the environment from the effects of the release (known as a "first responder operations level" response) as described in the North Carolina Occupational Safety and Health Hazardous Waste Operations and Emergency Response Standard Final Rule (13 NC Administrative Code 7C.0101(a)(26) and 29 Code of Federal Regulations 1910.120).

(2) The FIRE DEPARTMENT shall participate, within the limits of its personnel and equipment resources and capabilities and with deference to its primary responsibility, in any county-wide, inter-county or county-municipality mutual aid or interlocal agreement entered into by the COUNTY under the conditions set forth below.

(3) The FIRE DEPARTMENT shall provide one or more inspectors to assist in the enforcement of the Cumberland County Fire Prevention Ordinance and the Fire Prevention Code incorporated in such Ordinance, as set forth therein.

(4) The FIRE DEPARTMENT shall encourage qualified personnel to volunteer for assignment to the Cumberland Emergency Response Team (CERT) and release accepted volunteers to such unit for service therewith.

c. Facilities, Equipment and Personnel: The FIRE DEPARTMENT shall provide all facilities, equipment and personnel necessary to furnish fire protection services as herein above required.

d. Standards of Performance: The FIRE DEPARTMENT shall furnish fire protection services in a professional, efficient and workmanlike manner, in particular so as to meet the requirements of and comply with rules and regulations of the North Carolina Insurance Rating Bureau and other pertinent federal, state, and COUNTY laws, regulations and standards.

e. Fees: The FIRE DEPARTMENT will furnish said fire protection free of charge to all persons and property located within its area of responsibility, except that a fee may be charged for the cost of materials, equipment depreciation, and labor expended in the course of a response to a release or potential release of hazardous substances in the course of performing under the provisions of this contract.

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f. Use of Funds Provided: The FIRE DEPARTMENT shall hold and use tax monies received under the provisions of this Contract and any property acquired with such monies solely and exclusively to provide the fire protection services set forth above. Such use encompasses payment of any necessary and lawful fire protection expense including payment of principal and interest in satisfaction of any indebtedness incurred in acquisition of facilities and equipment.

g. Training:

(1) The FIRE DEPARTMENT shall be responsible for the training of all its personnel in accordance with the rules and regulations of the North Carolina Insurance Rating Bureau and other pertinent federal, state, and COUNTY laws and regulations or otherwise with commonly accepted professional standards, so as to qualify such personnel to perform the services required by this contract.

(2) The FIRE DEPARTMENT shall train or insure that all its personnel receive training to respond to hazard material releases or potential releases; such training shall be at the "first responder operational level" in accordance with the Occupational Safety and Health Administration (OSHA) Final Rule for Hazardous Waste Operations and Emergency Response (29 CFR 1910.120), dated March 6, 1989, and North Carolina Occupational Safety and Health Hazardous Waste Operations and Emergency Response Standard Final Rule (13 NC Administrative Code 7C.0101(a)(26)). Training of current personnel subject to the foregoing regulations shall be completed not later than March 6, 1990; thereafter new personnel subject to the regulations shall receive such training as soon as practicable. In no event after March 6, 1990, shall any personnel of the FIRE DEPARTMENT be permitted to take part in actual responses to releases or potential releases of hazardous substances at any level for which such personnel have not received training.

2. Incorporation: The FIRE DEPARTMENT, during the period this Contract is in effect, shall remain incorporated and do business as a private non-profit corporation under the provisions of the North Carolina Non-Profit Corporation Act. A true copy of the Articles of Incorporation, existing By-Laws, and any changes made from time-to-time to either will be filed with the COUNTY. The FIRE DEPARTMENT will adopt By-Laws which meet all minimum legal requirements of said Act. In addition said By-Laws shall have reasonable provisions entitling any resident in the area of responsibility of the FIRE DEPARTMENT to be a voting member of the corporation and enabling such members to participate in the affairs of the corporation at least in one (1) annual meeting. The By-Laws shall vest in a Board of Directors the authority to manage the affairs of the corporation without a vote of the membership to the extent permitted by said Act.

3. Budget Estimates: Not later than the 28th day of February of each year, the FIRE DEPARTMENT shall transmit to the Board of Commissioners of the COUNTY, in such detail and form as may be prescribed by the COUNTY Budget Director, a budget estimate containing the financial needs of the FIRE DEPARTMENT for the fiscal year commencing the 1st day of July next following, to the extent that such financial requirements are to be satisfied out of FIRE DISTRICT tax revenues.

4. Accounting:

a. Records: The FIRE DEPARTMENT shall establish and maintain separate distinct records and accounts and monies entrusted to it under the provisions of this Contract and expenditures therefrom in accordance with generally accepted accounting principles. Such records and accounts shall include inventories of all property purchased with funds entrusted to the FIRE DEPARTMENT under the provisions of this Contract.

b. Annual Audit: The FIRE DEPARTMENT will present to the Board of Commissioners of the COUNTY an annual audit by a Certified Public Accountant, which shall be in conformity with existing audit policies of the COUNTY.

c. Inspection: The COUNTY may inspect all records and accounts which the FIRE DEPARTMENT is required to establish and maintain under the provisions of this Contract and may make such inspection at any reasonable time.

## II.

The COUNTY promises and agrees as follows:

### 1. FIRE DISTRICT Budget Ordinance:

a. Not later than the 1st day of July of each year this Contract is in effect the Board of Commissioners of the COUNTY, acting as the governing body of the FIRE DISTRICT, shall adopt a budget ordinance for said FIRE DISTRICT in which sufficient monies will be appropriated to provide fire protection services for said district in accordance with this agreement. The budget ordinance shall be in a form and subject to the directions and limitations prescribed or provided in N.C.G.S. Section 159-13.

b. In the event the FIRE DISTRICT contains two or more areas of responsibility in which separately incorporated fire departments shall provide fire protection services, the budget ordinance for the FIRE DISTRICT shall be divided into sub-funds, to each of which FIRE DISTRICT tax revenues shall be allocated in accordance with the ratio the tax basis of each area of responsibility bears to the total tax basis of the FIRE DISTRICT. The transfers and expenditures authorized in each sub-fund shall be based upon budget estimates from the FIRE DEPARTMENT serving each sub-fund's territory as heretofore provided, but in no event shall the amount of such transfers and expenditures exceed the amount of revenues allocated to each sub-fund.

2. Levy and Collection of Taxes: Not later than the 1st day of July of each year this Contract is in effect, the COUNTY will determine, within the limits prescribed by law, what rate of special ad valorem tax it will levy against property in the FIRE DISTRICT. In prescribing such rate the COUNTY shall consider the budget estimates of fiscal requirements submitted by all the fire departments serving such district and the tax basis of the FIRE DISTRICT. Upon approval of the budget ordinance for the FIRE DISTRICT as heretofore provided, the COUNTY shall levy and collect a special ad valorem tax in such District as provided by law.

3. Separate Trust Fund: Special FIRE DISTRICT ad valorem tax revenues will be appropriated into the Trust Fund or sub-funds established by the budget ordinance as heretofore provided. Except for transfers to the FIRE DEPARTMENT or as may be otherwise provided in Chapter 69 of the North Carolina General Statutes, the COUNTY shall not transfer monies from the Trust Fund or sub-funds established in the budget ordinance for the FIRE DISTRICT unless the FIRE DISTRICT or FIRE DEPARTMENT has ceased to function. In such event the monies in pertinent Trust Fund or sub-fund shall be transferred or expended as by law provided.

4. Payment of FIRE DEPARTMENT: Annually, as requested by the FIRE DEPARTMENT, commencing the 1st day of October of each year, to the extent special FIRE DISTRICT tax revenues have been collected and appropriated in the FIRE DISTRICT Budget Ordinance, but no more frequently than once per month, the COUNTY shall transfer and pay over to the FIRE DEPARTMENT monies contained in the Trust Fund or sub-fund established for the area of responsibility of FIRE DEPARTMENT.

5. Mutual Aid or Interlocal Agreements: The COUNTY, unless otherwise required by law, shall not enter into mutual aid or interlocal agreements with other rural fire protection districts or units of government, except upon the recommendation of the Fire Marshal and approval of two-thirds of the County Volunteer Fire Department's Chiefs at a regularly scheduled Chief's Meeting and subsequent approval of the County Board of Commissioners.

III.

The COUNTY and FIRE DEPARTMENT mutually agree as follows:

1. Duration: This Contract shall be valid and effective from July 1, 1989, and continue in effect until superceded by a new agreement or until terminated as herein provided.

2. Amendment: This Contract may be amended only by mutual agreement of the parties in a written addendum hereto, except that in the event a provision of this Contract becomes inconsistent with any state or local law duly and properly enacted hereafter, then and in that event only, such provision shall be deemed by both parties hereto to be amended to conform with such state or local law without necessity of any further action by either party.

3. Termination:

a. For Cause: At any time during the period this Contract is in effect, either party may terminate this Contract for cause upon breach of or failure to perform said Contract on the part of the other party, such termination becomes effective on the date of such breach or failure to perform, provided that the aggrieved party within the reasonable time after such breach or failure to perform, shall provide written notice specifying such breach or failure to perform and allow the party at fault thirty (30) days within which to cure or correct such breach or failure to perform. In the event the breach or failure to perform is cured or corrected within such period, the Contract shall continue in effect as though such breach or failure to perform had not occurred; in the event there is no cure or correction of such breach or failure to perform within the prescribed time, this Contract shall terminate as heretofore provided.

b. Upon Supercession: In the event this Contract is superceded by a new agreement executed in writing between the parties, this contract is forthwith terminated.

c. Non-appropriation: In the event, for reasons beyond the control of the Board of Commissioners of the COUNTY or within the lawful legislative discretion of said Board, special ad valorem property taxes are not levied in the FIRE DISTRICT or tax revenues are not appropriated for the FIRE DISTRICT Budget Ordinance for any forthcoming fiscal year in which this agreement is to be in effect, this agreement is terminated as of the end of the fiscal year next preceding such forthcoming fiscal year.

IN TESTIMONY WHEREOF, on the date and year first above written, the COUNTY has caused this instrument to be executed by the Chairman of the Board of Commissioners of the COUNTY and attested by the Clerk to said Board, and the FIRE DEPARTMENT has caused this instrument to be signed in its name by its Chairman, attested by its Secretary, and its corporate seal hereto affixed, all by order of its Board of Directors duly given.

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COUNTY OF CUMBERLAND

ATTEST

By: Marsha Fogle  
MARSHA FOGLE, Clerk

By: Robert C. Lewis, Jr.  
ROBERT C. LEWIS, JR., Chairman

STONEY POINT VOLUNTEER FIRE DEPARTMENT

ATTEST

By: William R. Hines  
SECRETARY  
William R. Hines

By: Daniel C. Brown  
Daniel C. Brown  
TITLE: President

APPROVED FOR LEGAL SUFFICIENCY:

John F. Nalepa  
County Attorney's Office

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

By: John F. Nalepa  
JOHN F. NALEPA, Finance Officer

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