

**AUTOMATIC AID AGREEMENT
BETWEEN AND AMONG
TOWN OF APEX and the MONCURE VOLUNTEER FIRE DEPARTMENT, INC.
FOR AUTOMATIC FIRE DEPARTMENT RESPONSE TO STRUCTURE FIRES IN AREA "A"**

THIS FIRE PROTECTION AUTOMATIC AID AGREEMENT (This "Agreement") is made and entered into this 1st day of July, 2019, by and between the TOWN OF APEX, a North Carolina municipal corporation, hereinafter referred to as "Town"; MONCURE VOLUNTEER FIRE DEPARTMENT, INC., a non-profit corporation organized and existing under the laws of the State of North Carolina, hereinafter referred to as "Department"; Chatham County, a municipal corporation organized and existing under the laws of the State of North Carolina ("Chatham"); and Wake County, a municipal corporation organized and existing under the laws of the State of North Carolina, hereinafter referred to as "Wake". Collectively these entities are referred to as the "Parties".

WITNESSETH:

WHEREAS, the Town provides fire protection services by and through its municipal fire department in the Apex Municipal Fire District and the Hipex Fire District;

WHEREAS, Department is a combination (paid and volunteer) fire department that provides fire protection services in the Moncure Fire District;

WHEREAS, N.C.G.S. §§ 58-83-1 and 160A-293 authorize the Town and the Department to send (or decline to send) firefighters and firefighting equipment beyond the response areas that they normally serve, provide for retention of authority, rights, privileges and immunities, including coverage under the Workers' Compensation laws, enjoyed by firefighters in their response areas when those firefighters respond beyond those response areas, and further provide for retention of authority, rights, privileges and immunities of the Town and Department enjoyed by those agencies in their response areas when those agencies respond beyond those response areas;

WHEREAS, the Town and Department desire to provide the highest level of fire protection possible to their respective fire districts along with the lowest possible NC Response Rating public protection classification ratings; and

WHEREAS, the Town and Department desire to enter into an agreement whereby reciprocal automatic aid assistance as described herein will be provided for all structure fire calls within designated areas in their respective fire districts.

NOW, THEREFORE, in consideration of the mutual covenants and promises and the other matters set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

1. The Town shall provide fire protection automatic aid for all structure fire calls within the Moncure Fire District outlined in the map attached hereto as **Attachment "A"**, which is incorporated by reference as if fully set forth herein. Automatic aid assistance provided by the Town pursuant to this Agreement shall consist of the dispatch and response of one (1) pumper with a minimum pump capacity of 1,000 gallons per minute (GPM) and one (1) water tank with a minimum capacity of 750 gallons, including a staff of at least three certified firefighters. The Town shall use Chatham County Fire as the operating radio frequency when responding to structure fire calls pursuant to this Agreement. Provided, however, that nothing herein shall require the Town to provide fire protection aid pursuant to this Agreement whenever the Town's Fire Chief, in his/her sole and absolute discretion, determines that (i) it is not feasible or practicable for the Town to do so, or (ii) it would impair the public health, safety or welfare for the Town to do so.
2. Department shall provide fire protection automatic aid for all structure fire calls within the area in the Hipex Fire District outlined in the map attached hereto as **Attachment "B"**, which is incorporated by reference as if fully set forth herein. Automatic aid assistance provided by the Department pursuant to this Agreement shall consist of the dispatch and response of one (1) fire apparatus with a minimum pump capacity of 250 gallons per minute (GPM) and one (1) water tank with a

minimum capacity of 1500 gallons, including a staff of at least two certified firefighters. The Department shall use the Fire Tac assigned by the Cary 911 Communications Center as the operating radio frequency when responding to structure fire calls pursuant to this Agreement. Provided, however, that nothing herein shall require the Department to provide fire protection aid pursuant to this Agreement whenever the Department's Fire Chief, in his/her sole and absolute discretion, determines that (i) it is not feasible or practicable for the Department to do so, or (ii) it would impair the public health, safety or welfare for the Department to do so.

3. Department hereby waives any and all claims of liability against the Town for death or injury of any of the Department's members, or for damage, theft, loss or destruction of any of Department's equipment or personal property of its members, in connection with response to, operation at and/or return from a response to any structure fire call pursuant to this Agreement. Department also hereby waives any and all claims against the Town for any costs incurred in connection with response to, operation at and/or return from a response to any structure fire call pursuant to this Agreement, including but not limited to salaries, reimbursements or other compensation (nominal or otherwise) and costs of apparatus and other equipment operation; provided, however that Department may present to the Town an itemized statement of costs for materials that, by their nature, are consumed in connection with their intended use (such as firefighting foams and substantially similar extinguishing, foaming, sealing or other agents) in connection with delivery of fire protection services pursuant to this Agreement, upon receipt of which such materials shall be paid for by the Town.
4. Town hereby waives any and all claims of liability against Department for death or injury of any of the Town's personnel, or for damage, theft, loss or destruction of any of the Town's equipment or personal property of its personnel, in connection with response to, operation at and/or return from a response to any structure fire call pursuant to this Agreement. The Town also hereby waives any and all claims against Department for any costs incurred in connection with response to,

operation at and/or return from a response to any structure fire call pursuant to this Agreement, including but not limited to salaries, reimbursements or other compensation (nominal or otherwise) and costs of apparatus and other equipment operation; provided, however that Town may present to Department an itemized statement of costs for materials that, by their nature, are consumed in connection with their intended use (such as firefighting foams and substantially similar extinguishing, foaming, sealing or other agents) in connection with delivery of fire protection services pursuant to this Agreement, upon receipt of which such materials shall be paid for by the Department.

5. Town and Department shall work with their respective Emergency Communication Center Directors to maintain accurate information pertaining to this Agreement.
6. Nothing herein is intended to, nor may it be construed as, abrogating, limiting, impairing or otherwise affecting the privileges, immunities, rights and authority provided for in N.C.G.S. §§ 58-83-1 and 160A-293.
7. TERM. This contract shall be effective upon the date first written above and will continue for 60 months, unless terminated by either "Town" or "Department" as herein provided. After the initial term, this contract shall automatically renew for successive one year terms.
8. EMERGENCY INCIDENT PROCEDURES. The first arriving fire unit at the emergency scene will use all necessary and appropriate tactics and strategies to minimize injuries, loss of life, and property damage. The National Incident Management System will be put into place. A Department fire officer shall determine the need to assume command upon arrival at the emergency scene in the area identified in Attachment A and a Town Fire Officer shall determine the need to assume command upon arrival at an emergency scene in the area identified in Attachment B. The Incident Commander will determine the need for equipment and manpower and may release apparatus and equipment at his/her discretion, with Department equipment being released first, except in unusual or emergency situations. Any

such unusual or emergency situations will be subject to review by the Chief Officers of the Department and Town.

9. TERMINATION.

- a) Termination for Convenience. Town or Department may terminate this Agreement at any time upon thirty (30) days written notice to the other Parties via certified mail, return receipt requested.
- b) Termination by Town. The Parties acknowledge that the Town may, in the future, construct an additional fully-staffed fire station with the intent of providing service delivery capabilities for direct Town fire and emergency service delivery to Area "B". In this case, the Town may, upon thirty (30) days' written notice to Department, reduce or eliminate the service responsibility of Department to providing mutual aid assistance only. If Town terminates the automatic aid requirement in Area "B", Town agrees to continue to provide automatic aid to Area "A" per this agreement.
- c) Termination for Default. Each term and condition of this contract is a material condition. In addition to any other remedy to which a party is entitled, violation of any term or condition of this contract, or any term or condition of any other contract or agreement between the parties, will be a proper basis for the termination of this contract. The party alleged to have violated this contract must first be given written notice of the violation and an opportunity to cure said violation. For purposes of this paragraph, "an opportunity to cure" will mean no more than ten (10) calendar days. If either party fails to cure the violation after notice and an opportunity to cure, the other party may in its sole discretion, terminate this contract by written notice signed by such party's Chief, and, in addition, take such other and further action as to which such party may be entitled at law or in equity.
 - i. Town may terminate this contract without prior written notice upon the occurrence of any one or more of the following events:

1. Department closes the station located at 2389 Old US HWY 1, Moncure, NC 27559 without providing replacement facilities;
 2. Department fails to respond to an emergency call with no prior notice and/or warning that the Department is unavailable, except when all Department units are answering another call or are out of position due to emergency calls.
- d) Termination of this contract will be effective upon written receipt of the notice of termination by any one of the person(s) described below;
- i. For Department: any corporate officer of the Department or the Department Chief.
 - ii. For Town: Town Manager
- e) Failure by any party to give notice of violation or to terminate this contract will not waive such party's right to give notice of other violations or to terminate this contract for any other violations.

10. CONSENT OF THIRD PARTIES CHATHAM COUNTY AND WAKE COUNTY

- a) Chatham County signs below for the purpose of and only for the purpose of providing its consent and agreement that the Town may provide fire protection aid to referenced unincorporated areas of Chatham County.
- b) Wake County signs below for the purpose of and only for the purpose of providing its consent and agreement that the Town may provide fire protection aid to referenced unincorporated areas of Wake County.

11. NOTICE.

- a) Any written notice shall be given by certified mail addressed as follows:

For Town:

Town of Apex Fire Department

Attn: Fire Chief

PO Box 250

Apex, NC 27502

For Department:

MONCURE Volunteer Fire Department, Inc.

Attn: Fire Chief

PO Box 289

Moncure, NC 27559

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above, with the intent that it be executed under seal.

TOWN OF APEX

By: _____
Drew Havens, Town Manager

ATTEST:

By: _____
Town Clerk

[AFFIX CORPORATE SEAL-STAMP]

MONCURE VOLUNTEER

FIRE DEPARTMENT, INC.

By: Thomas E. Lewis
Print Name: Thomas E. LEWIS
Title: Chairman, Board of Directors

ATTEST:

By: Jere C. Julian, Jr.
Print Name: Jere C. Julian, Jr.
Title: Secretary

[AFFIX CORPORATE SEAL-STAMP]

CHATHAM COUNTY

By: Dan LaMontagne
Dan LaMontagne, County Manager

APPROVED AS TO FORM:

By: Richard J. Rose
Richard J. Rose, County Attorney



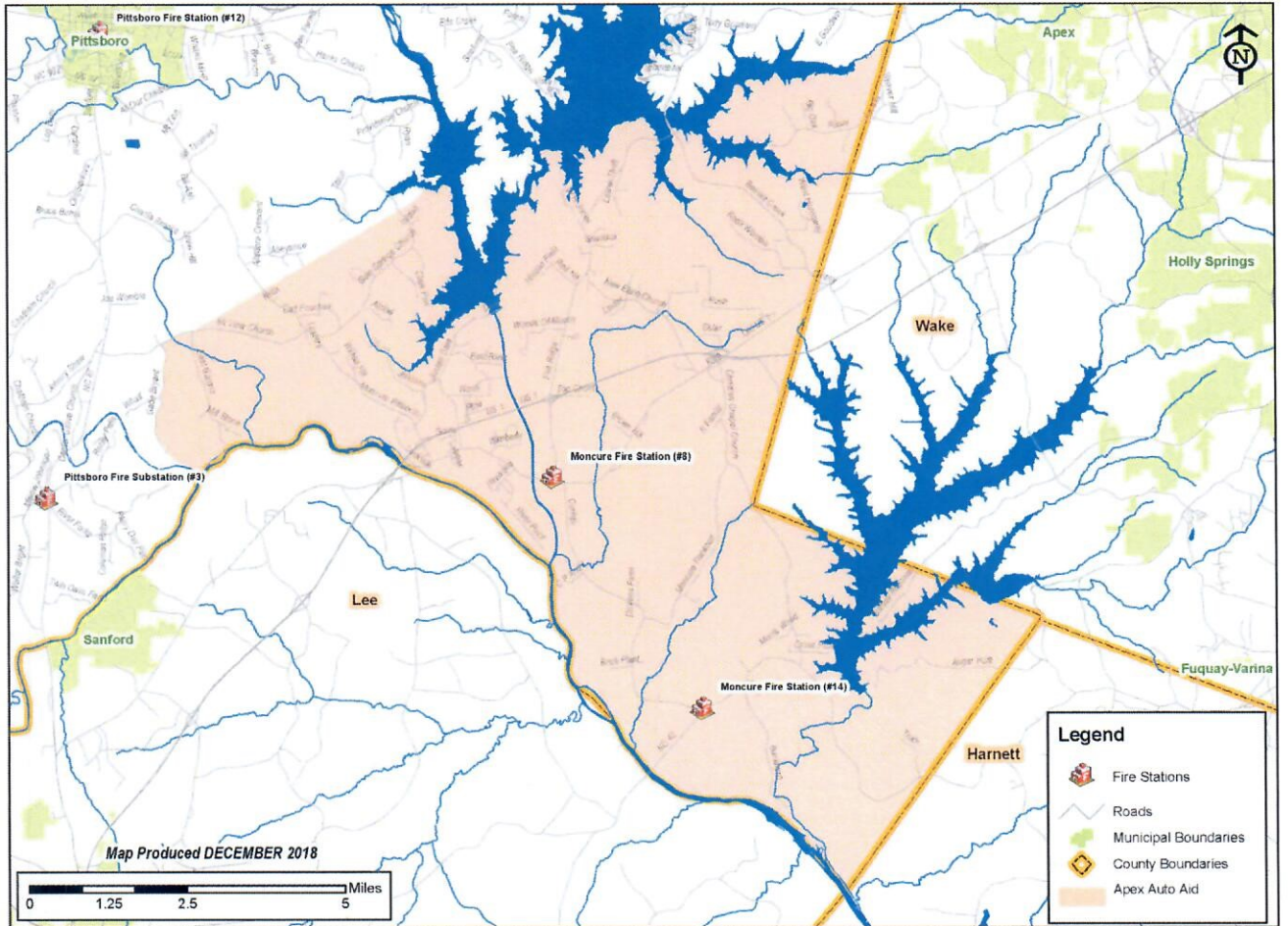
WAKE COUNTY

By: _____
David Ellis, County Manager

APPROVED AS TO FORM:

By: _____
Scott W. Warren, County Attorney

ATTACHMENT A



Attachment B

