

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

FIRE PROTECTION AGREEMENT AMENDMENT

This **AMENDMENT** made and entered into the 27th day of May, 2020, by and between the County of Wake, a body politic and corporate of the State of North Carolina, hereinafter referred to as "**COUNTY**" and Town of Apex hereinafter referred to as "**TOWN**";

WITNESSETH

That **WHEREAS**, the **COUNTY** and **TOWN** have an existing legal contract specifying services, terms and conditions under which the **TOWN** provides specified services to the **COUNTY**; and,

WHEREAS, said contract, dated the first day of July 2010, was officially signed by both parties; and,

WHEREAS, said contract specified the compensation to be received by **TOWN** from the **COUNTY**, and the terms of said contract; and,

WHEREAS, **COUNTY** desires to continue **TOWN'S** services for an additional period of 12 months to the current contract; and,

WHEREAS, the **TOWN** has accepted this continuation and is desirous of a continued relationship with the **COUNTY** to provide these services.

NOW, THEREFORE, and in consideration of the continued services offered by the **TOWN** and agreed to by the **COUNTY**, the **COUNTY** and **TOWN** mutually agree to amend the **TERM** of the contract dated the first day of July 2010, as it relates to the expiration term to read "first day of July 2020."

1. Replace Section 18, in its entirety with the following:

SECTION 18. INSURANCE AND INDEMNIFICATION

16A. Insurance. The Town shall obtain and keep in force during the term of this Agreement and any subsequent renewals of this Agreement the following minimum insurance coverages, annually providing the Wake County Finance Department with a certificate of insurance. All required insurance shall be procured from insurance companies licensed to do business in North Carolina with a Best's Insurance Guide Rating of no less than A- and a financial size category of no less than VII; or the Volunteer Safety Workers' Compensation Fund owned and operated by the State of North Carolina. The Town shall be responsible for purchasing such insurance coverage for both regular employees and volunteers. Coverage shall be maintained continuously during the term of this agreement.

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- A. *Worker's Compensation, with limits for Coverage A: Statutory for State of North Carolina, and Coverage B – Employers Liability: \$100,000 each accident/\$100,000 disease each employee/\$500,000 disease.*
- B. *General Liability, Including Medical Malpractice/Errors and Omissions, with limits not less than \$1,000,000 per occurrence or incident, including contractual liability.*
- C. *Commercial Auto Liability, with limits not less than \$1,000,000 per accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles.*
- D. *Auto Physical Damage Coverage for any vehicle, including permanently attached equipment, listed by the Town on the Fire Tax District replacement schedule, regardless of whether owned by County or Town. Each vehicle shall be insured on an Agreed Value basis. Values will be provided by Wake Fire Services at the end of each calendar year. Wake County shall be Loss Payee for any County-owned or leased vehicle used in provision of contract services. For the purpose of this section, "Agreed Value" is the value agreed upon by the insured and the insurer at the beginning of the policy period but may be amended by endorsement.*
- E. *Blanket Portable Equipment Coverage, on a guaranteed replacement cost basis, for any portable equipment used in the provision of contract services.*
- F. *Umbrella or Excess Liability, with limits not less than \$2,000,000, providing excess coverage over the underlying Employer's Liability; General Liability including Medical Malpractice/Errors and Omissions Liability; Auto Liability; and Public Officials Management Liability. There shall not be any "drop down deductibles" in areas where underlying coverage is not required but an Umbrella Policy provides coverage.*
- G. *Fidelity/Employee Dishonesty Coverage, covering all employees and volunteers, with limits not less than \$100,000.*
- H. *Business Auto Policy: Coverage with minimum limits of \$1,000,000.00 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.*
- I. *Public Officials Management Liability: Coverage with minimum limits of \$1,000,000.00 per claim and \$2,000,000.00 aggregate. If the Town utilizes a funded reserve pursuant to adoption of a Resolution in accordance with 160A-485, then the Town's Risk Manager shall provide a letter of self-insurance confirming coverage for wrongful acts related to Fire Department management, including appropriate expenditure of funds and employment practices.*

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Wake County shall be included as additional insured on the General Liability, including Medical Malpractice/Errors and Omissions; Auto Liability, Management/Directors and Officers Liability; Umbrella Liability, and any other policy covering property owned by Wake County or where Wake County has funds at risk. Any policy insuring a vehicle owned by Wake County shall include Wake County as an Additional Insured Lessor and as a Loss Payee.

16B. Indemnification. The Town shall indemnify and save harmless Wake County from any and all liability and expenses including attorney's fees, court costs, and other costs incurred by Wake County which are caused by the negligence or willful misconduct of the Town, its agents, or employees, up to the limits of insurance specified herein; provided that such liability arises out of acts for which any defense of governmental, statutory, or common law immunity is not available. The indemnification provided for herein shall not be construed as a waiver of any applicable defense of governmental, statutory, or common law immunity, and shall not prevent the Town or County from asserting any defense of such immunity; provided that if a court of competent jurisdiction determines that no such immunity applies, then the indemnity provided for herein shall apply.

2. All other rights, terms, and considerations currently contained in this contract remain in effect.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by both parties this amendment in two (2) copies, each of which shall be deemed to be an original, on the day and year first above written.

THE COUNTY OF WAKE

TOWN OF APEX

By _____
Wake County Fire Services Director

By _____
Apex Town Manager

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

WAKE COUNTY FINANCE DIRECTOR

This person is responsible for monitoring the contract performance requirement is Darrell Alford.

_____ Department Head Initials