

State of North Carolina
Henderson County

AUTOMATIC AID AGREEMENT FOR FIRE PROTECTION

This Agreement, made the 25th day of MAY, 2022, by and between the City of

Hendersonville, a municipal corporation, hereinafter referred to as the "City" and the

DANA VOL. FIRE RESCUE, INC., a duly organized County fire department, being a North Carolina nonprofit corporation, herein after referred to as "County Fire Department";

W I T N E S S E T H:

WHEREAS, the General Assembly of North Carolina did enact into law an act to authorize automatic aid assistance between fire departments whereby full authority may be, but is not required to be, exercised by fire departments to send firefighters and apparatus beyond the territorial limits which they normally serve, said act having been codified as Chapter 58, Section 83-1, of the General Statutes of North Carolina; and

WHEREAS, County Fire Department is a nonprofit corporation, serving a Rural Fire Protection District, herein referred to as "Fire District," organized pursuant to Chapter 69, Article 3A of the General Statutes of North Carolina, and are therefore funded, primarily, through fire district taxes, assessed on real and personal property within the Fire District; and

WHEREAS, the City of Hendersonville has the authority to annex real property into the municipal corporate limits of the City, including properties located within the Fire District; and

WHEREAS, when property located within the Fire District is annexed by the City of Hendersonville, any such annexed property ceases to be a part of the Fire District, and ceases to be subject to the fire district tax for the Fire District, resulting in lost revenue to the County Fire Department; and

WHEREAS, Section 69-25.14 of the General Statutes of North Carolina authorized the City to contract with the County Fire Department to provide fire protection services within the City, including those automatic aid assistance as contemplated by as Chapter 58, Section 83-1, of the General Statutes of North Carolina; and

WHEREAS, the City operates a municipal fire department, herein referred to as "Hendersonville Fire Department," to provide fire protection services and other services within the corporate limits of the City; and

WHEREAS, the City wishes to contract with the County Fire Department to provide automatic aid assistance

within the municipal limits of the City to ensure that automatic aid assistance, increased fire defenses and fire control, as well as assurance of adequate protection for the City residents; and

WHEREAS, the City is willing to pay to the County Fire Department an annual fee and is willing to reciprocate the automatic aid assistance to the Fire District to ensure that automatic aid assistance, increased fire defenses and fire control, as well as assurance of adequate protection for the Fire District residents, in consideration for the County Fire Department's provision of automatic aid assistance within the City's municipal limits;

WHEREAS, this Agreement will also provide each of the parties hereto, through their mutual cooperation, a pre-determined plan; as agreed upon in dispatch protocol, by which each of them render aid to the other in case of any incident;

WHEREAS, it is deemed to be in the public interest for the parties hereto to enter into an agreement for automatic aid assistance, and in order to increase fire defenses and to assure proper fire control, as well as providing reserves needed to assure the community of adequate protection;

THEREFORE, in consideration of the mutual covenants contained herein by and between the parties hereto, it is hereby agreed as follows:

1. The Whereas clauses are incorporated as a fully integrated part of this Agreement.
2. Beginning on August 1, 2022, and annually on each August 1 thereafter during the term of this Agreement, the City shall make an annual payment to the County Fire Department equal to five (5) times the fire district tax revenues lost for then current fiscal year (July 1-June 30) as a result of the City's annexations within the Fire District which become effective within said immediately preceding fiscal year. For example, if the City annexed three (3) parcels of land in the Fire District during FY 21-22, then on August 1, 2022 the City would pay a fee to the County Fire Department equal to the five (5) times the fire district taxes that would have been paid to the County Fire Department on each of said three (3) parcels during the then current fiscal year (FY22-23) but for the annexation. This would be calculated by multiplying the assessed valuation for the three (3) parcels as of January 1, 2022 by the tax rate in effect on August 1, 2022, and then multiplying that product by 5. In formula form the City's annual payment due is calculated as follows:

Annual payment owed = (Total Jan 1, 20XX assessed value(s) of parcel(s) * (Fire District tax rate on * (5)
on August 1, 20XX annexed during immediately preceding fiscal year) August 1, 20XX)

3. To activate the terms of this Agreement as herein set forth, due to conflagration, holocaust, civil disorder or

natural disaster, upon notification that an emergency does, in fact, exist and that aid is needed, the chief, or their designee of **Hendersonville Fire Department** and the chief or their designee of **County Fire Department** shall have the implicit authority, upon notification by either of the parties hereto to the other in a manner as previously agreed, that an emergency exists and that aid is needed, to order appropriate available apparatus, equipment, and staff into action to assist the needed party.

4. The responding party shall be responsible and liable for the actions of all persons under their control. The terms of this paragraph shall survive any termination of this Agreement.
5. Each party shall assume all liability and responsibility for damage, whether to its own apparatus and equipment or otherwise, caused by that party. Each party shall, in the event of damage to its own equipment, hold the other party harmless for such damage not caused by the other party. The terms of this paragraph shall survive any termination of this Agreement.
6. Each party shall assume all costs of salaries, wages, bonuses or other compensation for its own personnel that responds for duty under the terms of this Agreement and shall also assume all cost involving the use of apparatus, equipment, tools used specifically in response to the request for aid and shall make no charge for such use to the party requesting assistance. The terms of this paragraph shall survive any termination of this Agreement.
7. This Agreement shall have a term of 1 years, beginning July 1, 2022. Notwithstanding the term of this Agreement, either party may, at any time after June 30, 2026, terminate this Agreement for convenience, upon the serving of written notice of termination to the other party; however any such termination shall be effective June 30 following the date the notice is received by the other party. In such event, no further annual payments shall be due from the City after the effective date of the termination (June 30). Nothing in this paragraph shall preclude a termination of this Agreement for a material breach by the other party, after giving the other party a 30-day cure period for the breach.
8. When fire department personnel respond pursuant to this Agreement, each party's own jurisdiction, authority, rights, privileges, and immunities (including coverage under workers compensation laws) shall be extended to that party's personnel during an entire incident until completion.
9. A party responding under this Agreement shall respond with a minimum of one engine, fully equipped and assigned with a minimum of two certified firefighters that meets the **NFPA 1001 Firefighter Standard, 2013 edition**. Other department apparatus, including tankers and pumpers, may be responded upon demand and availability.

10. Although only two certified firefighters are required per this Agreement, parties shall make good faith efforts to assure that no fewer than three firefighters respond when operating tankers, pumpers, or aeri^{als}.
11. Parties shall respond to dispatched alarms in the most immediate and professional manner possible, using the most advantageous routes for quickness and safety.
12. **County Fire Department** units and personnel, together with those of **Hendersonville Fire Department**, shall simultaneously dispatched to all structure fire calls for service. In the event **County Fire Department's** units arrive at the scene before **Hendersonville Fire Department**, then **County Fire Department** units shall establish incident command utilizing the National Incident Management System and immediately commence activities to bring the incident under control. Upon the arrival of the **Hendersonville Fire Department** units at the scene of a fire or other emergency, officers from the City and the County Fire Department will determine the need to transfer incident command responsibilities. If the City officers assume incident command responsibilities, instructions and orders directed to County Fire Department personnel shall be communicated through standardized incident management principles and techniques. It shall be the responsibility of each party to equip and train its firefighters in a manner consistent with applicable regulations of the Occupational Safety and Health Administration of the U.S. Department of Labor and the State of North Carolina.
13. The **City** and **County Fire Department** hereby acknowledge that vehicles and equipment may shift within their respective departments, based on emergency requirements, but that long term or permanent changes that substantially alter the ability of a party to perform the terms of this Agreement shall be cause for termination of this Agreement by the other party upon thirty (30) days prior written notice to the first party.
14. In providing the emergency service response required in this Agreement, **City** and **County Fire Department** shall cause a response to be made of equipment and firefighters meeting each of the following minimum standards:
 - (a) The apparatus responding must meet the standards set forth in NFPA 1901 for firefighting apparatus.
 - (b) The apparatus must be in good operating condition. Tankers must be capable of carrying at least 1000 gallons of water. Pumpers must be capable of pumping at least 1000 gallons of water per minute.
 - (c) The firefighters responding on the apparatus must be fully equipped with firefighting personal protective clothing including turnout gear, boots, self-contained breathing apparatus, helmet and all other personal safety items.
 - (d) All firefighters and officers responding must meet the qualifications of a Firefighter or greater, as set forth in "Firefighter Professional Qualifications, 2013" as published by NFPA and otherwise known as NFPA 1001, and at a minimum be trained to the awareness level for hazardous materials response.

- (e) All apparatus, vehicles, materials, supplies, and other equipment used to respond to alarms pursuant to this Agreement shall be maintained by **Hendersonville Fire Department and County Fire Department** in good operating condition at all times. Both parties, shall rely on each other to inspect and maintain its apparatus, vehicles, materials, supplies, and other equipment.
- (f) Each party shall bear all of its costs and expenses required to fulfill its obligation under this Agreement, including, without limitation, all costs and expenses for providing, operating, equipping, replacing and maintaining its equipment materials, supplies, and personnel, including but not limited to apparatus, vehicles, tools, hose, protective equipment, neutralizing agents, and other special chemicals.

15. **County Fire Department** will record and maintain such information as **Hendersonville Fire Department** is required by law to record and maintain on any alarm to which **County Fire Department** responds. Such information will be recorded and maintained in the same manner as done by **Hendersonville Fire Department**. **Hendersonville Fire Department** is responsible for filing all incident report forms as may be required. In return, **Hendersonville Fire Department** will reciprocate same for incidents in **County Fire Department's** Fire District when **County Fire Department's** units are not present.
16. The first arriving fire unit at the emergency scene will establish incident command utilizing the National Incident Management System and use all necessary and appropriate tactics and strategies to minimize injuries, loss of life, and property damage. Upon the arrival of both department units, officers from the City and the County Fire Department will determine the need to transfer incident command responsibilities. The Incident Commander will determine the need for equipment and staff and may release apparatus and equipment at their discretion, except in unusual or emergency situations. Any such unusual or emergency situations will be subject to review by the Chief Officers of the **County Fire Department** and the **Hendersonville Fire Department**.
17. To the extent permitted by law, **County Fire Department** shall indemnify, defend and hold harmless **Hendersonville Fire Department**, City of Hendersonville, its elected officials, agents, and employees from and against any and all loss, damage, cost (not including attorney's fees), claims, liabilities, demands, expenses, judgments and executions for damage to property, or for injury or death to any person arising out of the failure of the **County Fire Department** in any respect to comply with the terms and conditions of this Agreement, or arising out of, or any way related to the conduct, actions, or omissions, of **County Fire Department** or its personnel or agents in providing, or failing to provide fire suppression or emergency services. The terms of this paragraph shall survive any termination of this Agreement.
18. To the extent permitted by law, the **City** shall indemnify, defend and hold harmless **County Fire Department**, its

officers, agents, employees and volunteers from and against any and all loss, damage, cost (not including attorney's fees), claims, liabilities, demands, expenses, judgments and executions for damage to property, or for injury or death to any person arising out of the failure of the **Hendersonville Fire Department** in any respect to comply with the terms and conditions of this Agreement, or arising out of, or any way related to the conduct, actions, or omissions, of **Hendersonville Fire Department** or its personnel or agents in providing, or failing to provide fire suppression or emergency services. The terms of this paragraph shall survive any termination of this Agreement.

19. The City and the **County Fire Department** shall both, throughout the term of this Agreement, keep and maintain with an insurance company or companies licensed to do business in the State of North Carolina, general liability insurance together with Worker's Compensation insurance coverage for their personnel. In addition, regardless of where the incident takes place, each department will be responsible for ensuring worker's compensation coverage is provided and initiated for its own personnel.
20. It is the intent and agreement of the parties that the **Hendersonville Fire Department and County Fire Department** shall partner efforts with respect to the services it shall perform under this Agreement. When **Hendersonville Fire Department and County Fire Department** personnel are en route to or from, or within the other's jurisdiction in carrying out this Agreement, **Hendersonville Fire Department or County Fire Department** and its personnel shall, subject to the provision of this Agreement, continue to enjoy the jurisdiction, authority, rights, privileges and immunities as if **Hendersonville Fire Department or County Fire Department** was acting within their respective fire protection district or city.
21. In consideration of the signing of this Agreement, the parties hereto for themselves, their agents, officials, employees and servants, agree to not discriminate in any manner on the basis of race, color, sexual orientation, creed, gender, handicap, or national origin with reference to the subject matter of this Agreement, no matter how remote.
22. WRITTEN NOTICE.

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

For Hendersonville Fire Department:
City of Hendersonville Fire Department Department
Attn: Fire Chief
632 Sugarloaf Rd
Hendersonville, NC 28792

For County Fire Department:

[Insert Name of Fire Department]

Dana Vol. Fire & Rescue Inc.

Attn: Fire Chief

2001 Dana Road

Hendersonville, NC 28792

(b) Any change in the address contained in subsection (a) above will be given to the other party immediately by written notice.

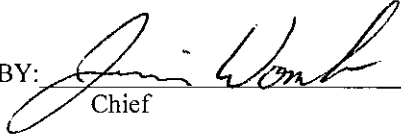
23. There are no intended third party beneficiaries of this Agreement. This Agreement does not create any rights enforceable by any person or entity not a party thereto, including but not limited to, County Fire Department firefighters and officers of the County Fire Department and residents or property owners located within City's or Department's service area inside or outside of the City.
24. This Agreement constitutes the entire agreement between the parties. There are no oral or written agreements or understandings which are binding upon the parties, except as expressly set forth herein. This Agreement cannot be amended, altered or modified in any manner except by written agreement, duly authorized by both parties.
25. Representatives of **Hendersonville Fire Department** and **County Fire Department** shall meet at least annually to review procedures and to improve coordination and cooperation between the two departments in providing emergency response. Joint training of **Hendersonville Fire Department** and **County Fire Department** firefighters shall occur at a minimum of 24 hours per year and as approved by **Hendersonville Fire Department** and **County Fire Department** Chiefs.
26. Any unresolved disputes between the City and **County Fire Department** shall be submitted in writing to each Agreement party. Both parties are obligated to formally meet to seek resolution for disputes. Should the City and the **County Fire Department** be unable to reach resolution of said conflict, a professional conflict mediation firm, acceptable to both parties, will be agreed upon to mediate a settlement. The cost of mediation shall be shared equally by the parties. Both the City and the **County Fire Department** agree to participate in the conflict mediation in good faith prior to exercising any legal rights under this Agreement. Such mediation shall be a condition precedent to either party filing action in a court of competent jurisdiction with regards to any dispute under this Agreement. Such mediation shall be conducted in accordance with the NC Rules for Court-ordered Mediation in Superior Court.
27. The City of Hendersonville agrees that **County Fire Department** may use water from City fire hydrants for fire protection purposes and training. **County Fire Department** agrees to maintain accurate records with regard to the use of such hydrant water and notify the City of Hendersonville Water Department when utilizing for training. This notice should consist of the

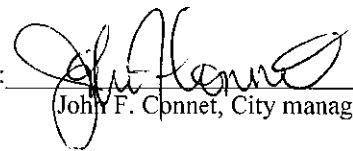
estimated amount of water used and shall go to the City of Hendersonville Utilities Director. The current Utilities Director is Lee Smith. Email: lsmith@hvlnc.gov

IN WITNESS WHEREOF, the City Council for the City of Hendersonville has approved and authorized its City Manager to execute this Agreement on behalf of City Council, and the **County Fire Department & Rescue Department,** has approved this Agreement and authorized its execution by its Fire Chief to be effective July 1, 2022.

[Insert Name of County Fire Department]

THE CITY OF HENDERSONVILLE

BY: _____
Chief

BY: _____
John F. Connet, City manager