

NORTH CAROLINA

AGREEMENT

UNION COUNTY

**THIS AGREEMENT** (“Agreement”) is made and entered into this \_\_\_\_\_, by and between UNION COUNTY, a political subdivision of the State of North Carolina located at 500 North Main Street, Monroe, North Carolina 28112 (hereinafter “the County”), and the CITY OF MONROE, a North Carolina municipal corporation, located at 300 W. Crowell Street, Monroe, North Carolina 28112 (hereinafter “City”) (each a “Party” and collectively, the “Parties”).

### **RECITALS**

**WHEREAS**, City has specialized personnel, training, and equipment in hazardous materials response and swiftwater rescue; and

**WHEREAS**, for a number of years City has provided hazardous materials response to seventeen volunteer fire departments in Union County which receive funds from County and are contracted with County to provide fire and rescue services in Union County response districts (“Volunteer Fire Departments”), without cost to those Volunteer Fire Departments; and

**WHEREAS**, City’s fire department has recently achieved advanced levels of certification in swiftwater rescue, and makes itself available to the Volunteer Fire Departments for swiftwater rescue as well; and

**WHEREAS**, County has previously provided support resources to City for assistance with swiftwater rescue and hazardous materials response services, to offset the cost of materials used in the course of delivering swiftwater rescue and hazardous materials response services and assistance to the Volunteer Fire Departments; and

**WHEREAS**, City has achieved these specialized and advanced training levels in these areas in order to serve their residents, as well as be a deployable resource for the Volunteer Fire Departments; and

**WHEREAS**, it has been and will continue to be mutually beneficial to both County and City for City to continue to provide hazardous materials response and swiftwater rescue services and assistance to the Volunteer Fire Departments for situations beyond the level of service the Volunteer Fire Departments are currently capable of providing; and

**WHEREAS**, units of local government are authorized to exercise jointly various powers and functions through interlocal cooperation pursuant to Article 20, Chapter 160A of the North Carolina General Statutes; and

**WHEREAS**, County and City desire to enter into this Agreement to work cooperatively and define certain terms related to the utilization of City's specialized personnel, training, and equipment in hazardous materials response and swiftwater rescue.

**NOW, THEREFORE**, for and in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, do hereby covenant and agree as follows:

## **ARTICLE I**

### **Recitals and Effective Date**

**1.1 Recitals.** The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by reference.

**1.2 Effective Date.** This Agreement shall become effective on the date when the last Party has signed this Agreement through an authorized representative (the "Effective Date").

## **ARTICLE II**

### **Purpose**

**2.1 Purpose.** The purpose of this Agreement is for County and City to develop the terms for the services provided and mutual aid assistance by City to the Volunteer Fire Departments. City shall provide hazardous materials response and swiftwater rescue assistance, if resources are available, as requested by County, to any of the Volunteer Fire Departments in accordance with this Agreement.

## **Article III**

### **Term and Termination**

**3.1 Term and Termination.** The term of this Agreement shall commence upon the Effective Date and continue for the period of five (5) years. This Agreement may be terminated by either Party at any time, without cause, upon at least six months' prior written notice to the other Party, with such termination to be effective July 1 of a given year.

Further, this Agreement may be terminated by either Party for cause upon default of the other Party. For purposes of this Agreement, “default” shall mean a material breach by a Party of the terms and conditions of this Agreement. Upon default of a Party, the non-defaulting Party shall provide notice to the defaulting Party specifying the basis for the default. Upon receipt of the notice, the defaulting Party shall have ten (10) days to cure the default. If the default is not cured within the applicable cure period, then this Agreement shall terminate upon the expiration of the cure period, unless otherwise agreed-upon by the non-defaulting Party.

## **Article IV**

### **Services Furnished by City**

**4.1 Swiftwater Rescue.** City agrees to furnish swiftwater rescue assistance and response assistance and services to any of the Volunteer Fire Departments in accordance with this Agreement. City will maintain, at a minimum, the Type 2 swiftwater rescue designation through North Carolina Emergency Management at all times during the term of this Agreement. City will provide swiftwater rescue assistance upon request from any Volunteer Fire Department (if resources are available at the time of request). County’s Emergency Management Department will not be responsible for dispatching City to assist a Volunteer Fire Department.

**4.2 Hazardous Materials Response.** City agrees to furnish hazardous materials response assistance and services to any of the Volunteer Fire Departments in accordance with this Agreement. City will maintain, at a minimum, the hazardous materials technician level designation through the North Carolina Office of State Fire Marshal at all times during the term of this Agreement. City will provide hazardous materials response services upon request from any Volunteer Fire Department (if resources are available at the time of request). County’s Emergency Management Department will not be responsible for dispatching City to assist a Volunteer Fire Department.

## **Article V**

### **Funding**

**5.1 Funding by County.** In order to establish the amount of County’s annual appropriation to City for providing the services set forth under this Agreement, the City understands and agrees that the City will submit a budget request to the County based on County’s estimated share of the costs of the provision of services under this Agreement for the upcoming County fiscal year. The budget request shall include how the funding will be used in relation to

training, equipment, and maintenance of equipment for both hazardous materials response and swiftwater rescue services. City shall also include long range planning for capital purchases in its budget request.

In accordance with N.C.G.S. § 159-11, the County Manager, as County's statutory budget officer, will make a budget recommendation to the Board of Commissioners. Pursuant to budgetary authority set forth in N.C.G.S. § 159-13, the amount appropriated to City for services provided under this Agreement for each fiscal year will be ultimately determined and adopted by the Board of Commissioners as deemed in its discretion sufficient and proper.

**5.2 Payment of Funds.** County agrees to pay City the amount appropriated by the Board of Commissioners for the services provided under this Agreement for the fiscal year. County will remit payment to City in a lump sum annually, on or before August 1 of every fiscal year.

## **Article VI Miscellaneous Provisions**

**6.1 Personnel and Property.** At all times under this Agreement, employees of City performing services hereunder shall remain employees of City, and all employees of the County shall remain employees of County. All property used in City's performance of the services set forth in this Agreement shall be considered property of City at all times and not property of County.

**6.2 Comprehension of Document and Mutuality in Drafting.** The Parties, intending to be legally bound, apply their signatures voluntarily and with full understanding of the contents of this Agreement. The Parties acknowledge that this Agreement was mutually drafted by each of the Parties and there is no presumption against any Party as the drafter of the Agreement.

**6.3 Governing Law/Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of North Carolina. Exclusive venue for any disputes arising hereunder is conferred upon the General Courts of Justice of the State of North Carolina sitting in Union County, North Carolina.

**6.4 Amendment.** This Agreement may be amended in writing duly authorized by the governing boards of both County and City and executed by the authorized officials of both Parties.

**6.5 Entire Agreement.** This Agreement contains the entire agreement

between the Parties regarding the subject matter hereof.

**6.6 Severability.** The provisions hereof are severable, and should any provision be determined to be invalid, unlawful or otherwise null and void by any court of competent jurisdiction, the Parties shall endeavor in good faith to replace the invalid, illegal or unenforceable provisions with valid provisions, the economic effect of which comes as close as practicable to that of the invalid, illegal or unenforceable provisions.

**6.7 Assignment.** Neither Party shall assign, sublet, or transfer any rights under or interest in this Agreement without the written consent of the other, which consent may not be unreasonably withheld, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to assignment, no assignment shall release or discharge the assignor from any duty or responsibility under this Agreement.

**6.8 Counterparts.** This Agreement may be executed in separate counterparts, with each counterpart deemed to be an original having the full force and effect thereof.

**[SIGNATURE BLOCKS APPEAR ON FOLLOWING PAGES.]**

IN WITNESS WHEREOF, each of the parties to this Agreement has caused the same to be executed in the day and year first above written.

ATTEST:

UNION COUNTY

\_\_\_\_\_  
Lynn G. West  
Clerk to the Board

(seal)

BY:\_\_\_\_\_  
William Mark Watson  
County Manager

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

\_\_\_\_\_  
Deputy Finance Officer

Approved as to Legal Form:KLC

ATTEST:

CITY OF MONROE

\_\_\_\_\_

BY:\_\_\_\_\_  
Brian J. Borne  
Interim City Manager

(seal)