



## REQUEST FOR BOARD ACTION

ITEM NO. 15.

**DATE OF REQUEST:** March 16, 2009

**REQUESTED BY:** Eddie King, Emergency Management Director

**SHORT TITLE:** Scotts Hill Fire Protection Contract

**BACKGROUND:** Since 1999, Pender County has contracted with Ogden Fire Department to provide fire protection services to the citizens of the Scotts Hill area. This contract is necessary because the travel distance to the Hampstead Fire Department exceeds the 6-mile maximum to provide the citizens with recognized fire protection under their insurance policies. The fire station located at Porter's Neck is located within 6 road miles of all of the Scotts Hill area.

The Ogden Fire Department, a private, non-profit corporation, is merging with New Hanover County Fire & Rescue, an agency of New Hanover County Government. In order to provide the citizens with continued fire protection, Pender County must contract with New Hanover County for that service. The attached contract has been developed by Pender County, and approved by the County Attorneys for both counties. It has also been forwarded to New Hanover County Board of County Commissioners for their approval. The execution of this contract will not change or alter response protocols that have been developed by the responding fire departments to the Scotts Hill area. No funding levels will be affected.

**SPECIFIC ACTION REQUESTED:** The Pender County Commissioners are requested to approve and execute a contract with New Hanover County to provide fire protection services to the citizens living in the Scotts Hill area.

**COUNTY MANAGER'S RECOMMENDATION**

Respectfully recommend approval.

JB  
Initial

**RESOLUTION**

**NOW, THEREFORE BE IT RESOLVED** by the Pender County Board of Commissioners that: the contract between Pender County and New Hanover County to provide fire protection to the Scotts Hill area is hereby approved. The Chairman of the Board of County Commissioners and the County Manager are authorized to sign any documentation needed to execute this contract.

**AMENDMENTS:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Tate \_\_\_ Brown \_\_\_ Blanchard \_\_\_ Rivenbark \_\_\_ Williams \_\_\_

\_\_\_\_\_  
Jimmy T. Tate, Chairman                      Date

\_\_\_\_\_  
ATTEST                      Date

NORTH CAROLINA )  
 )  
PENDER COUNTY )

**FIRE DEPARTMENT FUNDING AGREEMENT  
AND AUTOMATIC AID AGREEMENT**

**THIS AGREEMENT**, made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between **PENDER COUNTY**, North Carolina, a political subdivision of the State of North Carolina, hereinafter referred to as "County"; and **NEW HANOVER COUNTY**, a political subdivision organized under the laws of the State of North Carolina, having its principal office in Pender County, North Carolina, hereinafter referred to as "Department";

**WITNESSETH:**

**WHEREAS**, the Department has agreed to provide continuing fire protection service within its primary area of coverage, and the other areas on the basis of mutual aid contracts with other County Fire Departments for the benefit of the citizens of Pender County; and

**WHEREAS**, the Department has requested County to assist in the funding of above-described services by collecting and distributing a county-wide service district tax; and

**WHEREAS**, G.S. 153A-11, 153A-13, 153A-223, 153A-305 authorize County to provide the Department with financial support for the above described services;

**NOW, THEREFORE**, in consideration of the mutual benefits inuring to the parties hereto, and based upon the mutual covenants contained herein and the considerations stated therein, the parties do hereby covenant and agree as follows:

**I. Purpose of Agreement and the Department's Use of Funds**

A. Purpose of Agreement - County shall provide funds to the Department for the provision of continuing fire protection, as follows:

(1) The Department shall provide continuing fire protection service consistent with the levels of equipment, personnel and training required by the North Carolina Department of Insurance to all citizens of the Service District as defined in Exhibit A, maintain through the Office of State Fire Marshal at least a 9E rating for the Scotts Hill Insurance District, covered by the department, and will respond to automatic and mutual aid calls by the County Dispatcher with back-up assistance as called upon, at the Chief's discretion. For purpose of this Agreement, "Mutual Aid" is defined as requests for assistance when requesting fire department has exhausted all of its available resources and the department called for mutual assistance has available resources to send, as determined by the on-duty supervisor of the squad from which mutual aid is requested.

(2) The Department will respond simultaneously, upon the initial call of a structure fire with the neighboring department in which the Computer Aided Dispatch System (CAD) has identified them as the automatic aid department, with a piece of fire apparatus capable of carrying 1,000 gallons of water or more.

(3) The County shall operate a communication system sufficient to alert the Department and other agencies of fires that occur in the County. The County Central Dispatch shall be responsible for the dispatch of the fire departments with their primary, automatic, and mutual aid areas of coverage.

B. Description of the Department's Service Area - The Department's service area is defined in Exhibit A, attached hereto and incorporated herein by reference.

C. Term of Agreement - The term of this agreement shall be from the date of execution through June 30, 2010; provided, however, that in the event no replacement contract is executed covering this service district on or before June 30, 2010, this contract shall be extended under the same terms and conditions unless it is canceled by written notice mailed to the other party ninety (90) days prior to termination.

D. Payment - For their services, County agrees to pay to the Department one half (1/2) the amount of fire service district taxes collected from the Department's service area, to be paid on a monthly basis via electronic funds transfer. The County shall furnish to the Department by October 1st of each year an accounting of all Fire Taxes collected during the preceding fiscal year. Fire district tax funds will not be paid to the department unless this contract is properly approved, executed, and on file at the County Manager's Office.

E. Maintenance of Revenues - Should the revaluation of a Department's fire tax service district result in negative growth value of the district such that revenues received by the department would place an unnecessarily hardship in performing its duties under this agreement, the County will review the Department's budget and consider an adjustment of the tax rate for that district to maintain it revenue levels. This does not preclude the county from reducing the tax rate should revaluation yield a substantial increase in value for the district.

## **II. Termination of Agreement; Breach of Agreement -**

Each party shall have the right to terminate this Agreement by giving the other party one hundred eighty (180) days written notice of termination. In the event of termination, the Department shall only be entitled to a pro rata share of the fire district tax collected during the fiscal year based on the length of time that the contract was in effect. In the event the Department loses its Department of Insurance certification of meeting a 9S/9E standard, the County may terminate the contract on giving thirty (30) days written notice. In addition, the Department shall provide County with a financial accounting, as required by County, for all funds received by the Department and on hand up to date of termination.

## **III. Department Financial Reporting Requirements.**

A. Annual Written Accounting - The Department shall provide the County with an annual audit from a recognized CPA firm. The audit report is due within one hundred twenty (120) days of the end of the fiscal year which extends from July 1 through June 30.

B. Financial Records - The Department shall establish fiscal control and accounting procedures in accordance with generally accepted accounting principles. The procedures shall account for all funds paid by the County to the Department, and the Department shall maintain such records for three (3) years after the date of termination of the contract.

C. County Access to Financial Records - The Department shall allow the County Manager, or his designee, access to and the right to inspect and copy at reasonable hours and upon reasonable notice, all financial records concerning county funds.

D. Annual Budget Presentation - The Department shall furnish to the County on or before March 1 of each year, a proposed budget detailing the expenditures of tax generated revenues for the next budget year beginning July 1. This proposed budget shall be based upon the revenues generated for the current budget year. The County acknowledges that there will be changes in the proposed budget based upon actual generated revenues.

**IV. Independent Contractor -**

The Department understands and agrees that, in entering into this Agreement and providing services, it is acting as an independent contractor. Neither the Department, nor its employees, members nor personnel shall be deemed or construed to be employees of Pender County. The Department shall remain in complete operational control of its vehicles, program, volunteers, assistants and employees. The Department shall be responsible for any on the job injuries to its agents, volunteers, or employees. The Department shall control the hours, manner, and methods of providing fire suppression coverage by their volunteers, employees and all other persons acting in their behalf. The Department shall maintain insurance coverage covering their activities.

**V. Immunities and Defenses -**

The parties hereto expressly maintain and reserve all defenses they may have to any and all liability and expense, including but not limited to sovereign immunity and the public duty defense.

**VI. Entire Agreement -**

This Agreement, with exhibits, constitutes the entire understanding of the parties and contains all of the terms agreed upon with respect to the subject matter hereof. No modification or rescission of this Agreement shall be effective unless evidenced by a writing signed by both parties to this Agreement.

Any prior contracts between the parties hereto are hereby declared null and void as to the parties to this Agreement, save and except any prior agreement which has as its third party beneficiary any financial institution for the purpose of a loan guarantee. The portion(s) of said agreement setting out the loan guarantee shall be incorporated in this contract by reference.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals, by authority duly given, on the date first above written.

(CORPORATE SEAL)

**PENDER COUNTY**

ATTEST:

BY:

\_\_\_\_\_  
Rick Benton  
Clerk to the Board of Commissioners

\_\_\_\_\_  
Jimmy T. Tate, Chairman  
Board of Commissioners

I, \_\_\_\_\_, a Notary Public of the State and County aforesaid, certify that Paul Parker personally appeared before me this day and acknowledged that he is Clerk to the Board of Commissioners of Pender County, and that by authority duly given and as the act of the Board, the foregoing instrument was signed in its name by its Chairman, sealed with its official seal and attested by himself as its Clerk.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

NEW HANOVER COUNTY

(CORPORATE SEAL)

ATTEST:

BY:

\_\_\_\_\_  
Clerk to the Board of Commissioners

\_\_\_\_\_, Chairman  
Board of Commissioners

I, \_\_\_\_\_, a Notary Public of the State and County aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that (s)he is Secretary of the \_\_\_\_\_ Fire Department, a non-profit corporation and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President and attested by him/herself as its Secretary.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_