

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WAKE

THIS LEASE AGREEMENT (“Lease”), made and entered into as of the last date set forth in the notary acknowledgements below, by and between the STATE OF NORTH CAROLINA, a body politic and corporate, hereinafter referred to as “Lessor”; and COUNTY OF WAKE, a body politic and corporate, hereinafter referred to as “Lessee.” Lessor and Lessee are at times collectively referred to hereinafter as the “Parties” or individually as a “Party.”

W I T N E S S E T H :

THAT WHEREAS, Western Wake Fire Rescue, Inc. (“WWFR”), a North Carolina non-profit corporation (successor by merger to Fairgrounds Rural Fire Department, Inc.), leased the Premises described herein from Lessor for the operation and maintenance of a volunteer fire department under two previous lease agreements dated December 8, 1988 and December 19, 2008; and

WHEREAS, the current lease between Lessor and WWFR for the Premises expires on October 31, 2017; and

WHEREAS, Lessee leases from Lessor a parcel of land lying adjacent to the Premises (said adjacent parcel having a street address of 4017 District Drive, Raleigh, North Carolina), under a lease agreement dated December 8, 2016 for the operation of an emergency medical services station (the “EMS Lease”); and

WHEREAS, Lessee desires to lease the Premises and then, subject to the terms and conditions of hereof, sublease the Premises to WWFR; and

WHEREAS, Lessee further desires for the term of this Lease to coincide with the term of the EMS Lease; and

WHEREAS, the North Carolina Department of Administration has requested and approved the execution of this Lease for the purposes herein specified; and

WHEREAS, the execution of this Lease for and on behalf of Lessor has been duly approved by the Governor and Council of State at a meeting held in the City of Raleigh, North Carolina, on the 6th day of January 2015 and on the 11th day of July 2017; and

WHEREAS, the Parties hereto have mutually agreed to the terms of this Lease as hereinafter set out.

NOW, THEREFORE, in consideration of the rental hereinafter agreed to be paid and in further consideration of the covenants, conditions and provisions hereinafter set forth, Lessor does hereby rent, lease and demise unto Lessee, and Lessee hereby takes and leases from Lessor, for and during the term and under the terms and conditions hereinafter set forth, the Premises, as

described herein, with all rights, privileges and appurtenances thereunto belonging.

THE TERMS AND CONDITIONS OF THIS LEASE ARE AS FOLLOWS:

1. Incorporation of Recitals. The foregoing recital of facts are hereby incorporated herein to the same extent as if hereinafter fully set forth.

2. Premises. The “Premises” is defined as that certain parcel or tract of land lying and being in Meredith Township, County of Wake, North Carolina, and more particularly described as follows:

Starting at the Northwest property corner of the NCDOT’s District Engineer’s Office; thence running N 86 deg. 21 min. 51 sec. West 150 feet to a proposed right of way marker establishing the point and place of BEGINNING; thence, running S 14 deg. 00 min. West 210 feet to a point; thence N 86 deg. 21 min. 51 sec. West 220 feet to a proposed right of way marker; thence N 14 deg. 00 min. East 180 feet to a proposed right of way marker; thence approximately N 55 deg. 00 min. East 46 feet to a proposed right of way monument; thence S 86 deg. 21 min. 51 sec. East 190 feet the point and place of BEGINNING; containing 0.91 acres, more or less, with all improvements situated thereon and having a street address of 4021 District Drive, Raleigh, North Carolina.

3. Term. The term of this Lease is for a period of twenty (20) years, commencing on the 1st day of November 2017 and ending on the 31st day of October 2037, unless earlier terminated as provided herein (the “Term”).

4. Rent. Lessee shall pay to Lessor as rental for the Premises the sum of ONE DOLLAR (\$1.00) for the Term.

5. Termination. Either Party in its sole discretion may terminate this Lease for any reason upon one (1) year’s written notice to the other Party.

6. Use of Premises. Lessee shall use the Premises for the operation and maintenance of a fire station and for the provision of other related or ancillary public safety, health and emergency services, including serving as a base facility for the vehicles dispatched for statutorily mandated body transport operations performed by WWFR, or its successor in interest, at the time under contract with Lessee, and for no other purpose unless agreed to by Lessor and Lessee. Lessee expressly covenants and agrees that should the Premises cease to be used for such purposes, or other uses be made without the express written consent of Lessor, then Lessor may terminate this Lease and reenter and take immediate possession of the Premises.

7. Condition of Premises. The Parties acknowledge that WWFD has been in possession of the Premises since approximately 1988 under the leases referenced herein and during its possession, WWFR constructed and maintained the improvements currently located on the Premises. Lessee accepts the Leased Premises in its present condition and agrees that the Leased Premises are suitable for the purposes intended, without any representations or warranties of any

kind (including, without limitation, any express or implied warranties of merchantability, fitness or habitability) from Lessor or any agent of Lessor.

8. Operation and Maintenance. Lessee shall bear all costs involved in the operation and maintenance of its facilities on the Premises, including the provision of all utility services. At all times during the Term, Lessee shall, at Lessee's own cost and expense, keep and maintain the Premises and the improvements located thereon in good order and repair.

9. Improvements, Alterations and Changes. Lessee shall not erect or install any signs or other advertising media upon the Premises without the prior written consent of Lessor. Lessee shall not make any alterations, changes, renovations or improvements to the Premises, structural or otherwise, without the prior written consent of Lessor. Any alteration, restoration or improvement of the Premises shall be made by Lessee at its sole cost and expense and shall comply with all applicable governmental laws, rules, ordinances and regulations. Prior to the commencement of any alteration, renovation or improvement of the Premises, Lessee shall submit plans for the intended work to Lessor for written approval by the State Construction Office ("SCO"), a division of the North Carolina Department of Administration, and to such other agency or agencies designated by Lessor.

10. Compliance. Lessee agrees to comply, at Lessee's sole cost and expense, with all governmental laws, rules, ordinances and regulations applicable to the Premises or Lessee's use and occupancy thereof.

11. Prohibited Activities. Lessee shall not allow the Premises or any portion thereof to be used (i) for any unlawful purpose; (ii) for any purpose that promotes acts of moral turpitude; (iii) in any manner that would bring Lessor into disrepute; (iv) in a manner that is in violation of public policy; or (v) in a manner detrimental to the legitimate interests of Lessor.

12. Lessor's Right to Inspect. Lessor may at all reasonable times enter upon and inspect the Premises for the purpose of insuring Lessee's compliance with this Lease and for the additional purpose of fulfilling its obligations. Such entry by Lessor shall not constitute an eviction of Lessee or a deprivation of any right of Lessee and shall not alter the obligations of Lessee hereunder or create any right in Lessee adverse to Lessor.

13. Insurance. Lessee is a governmental authority using a funded reserve of \$1,000,000 for liability claims and a Public Entity Excess Liability Policy above the retention. Lessor shall not require other or different insurance coverage from Lessee as a condition of this Lease. Lessee shall require any of its contractors, agents, or sublessees entering the Premises to obtain and keep in place with well rated insurers, authorized to do business in the State of North Carolina, adequate insurance coverage, as applicable, for (i) statutory workers' compensation including, employers' liability; (ii) comprehensive general liability including, personal injury, broad form property damage, independent contractor, (iii) automobile liability; and (iv) fire and extended coverage insurance as appropriate to their operations on the Premises. Notwithstanding the rights of any insurer, nothing herein shall affect the authority of the Attorney General of North Carolina, including but not limited to, the Attorney General's authority to represent Lessor in any and all litigation.

14. Lessee's Liability. As between Lessee and Lessor, to the extent permitted by law and subject to the terms of this Lease, Lessee shall be primarily liable for the negligent or intentional acts or omissions of its agents, or employees. To the extent permitted by law, covered in accordance with any insurance policy or reserve fund, and consistent with the terms of the Wake County 2003 Resolution Governing Limited Waiver of Sovereign Immunity. Lessee agrees to save Lessor harmless from and against any and all loss, damage, claim, demand, liability, or expense, by reason of damage to person or property on or about the Premises, which may arise or be claimed to have arisen as a result of the use or operation of the Premises by Lessee, its agents or employees, except where such loss or damage arises from the willful or negligent misconduct of Lessor, its agents or employees.

15. No Waiver of Immunity. No provision of this Lease shall be construed as constituting a waiver of Lessor's sovereign immunity or Lessor's immunity under the Eleventh Amendment of the Constitution of the United States and Lessor's liability for any claims shall be limited to the extent and manner of recovery provided in Chapter 143, Article 31, of the North Carolina General Statutes (the "Tort Claims Act"). No provision of this Lease shall be construed as constituting a waiver of Lessor's or Lessee's sovereign, governmental, or statutory immunity or any other legal or equitable defense if otherwise available pursuant to law.

16. Casualty. In the event of the damage or, partial or complete destruction of Lessee's improvements on the Premises, Lessee may, at its option, cause such improvements to be repaired, at its sole cost and expense, or it may terminate this Lease in accordance with the terms hereof.

17. Hazardous Materials.

17.1 Definitions. For purposes of this Lease: (i) "Hazardous Material" or "Hazardous Materials" means and includes, without limitation, (a) solid or hazardous waste, as defined in the Resource Conservation and Recovery Act of 1980, or in any applicable state or local law or regulation, (b) hazardous substances, as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), or in any applicable state or local law or regulation, (c) gasoline, or any other petroleum product or by-product, (d) toxic substances, or rodenticides, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act of 1975, or in any applicable state or local law or regulation, as each such Act, statute, or regulation may be amended from time to time; (ii) "Release" shall have the meaning given such term, in Environmental Laws, including, without limitation, CERCLA; and (iii) "Environmental Law" or "Environmental Laws" shall mean "Super Fund" or "Super Lien" law or any other federal, state, or local statute, law, ordinance, or code, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be legally in effect, including, without limitation, the following, as same may be amended or replaced from time to time, and all regulations promulgated and officially adopted thereunder or in connection therewith: Super Fund Amendments and Reauthorization Act of 1986 ("SARA"); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"); The Clean Air Act ("CAA"); the Clean Water Act ("CWA"); the Toxic Substance Control Act ("TSCA"); the Solid Waste Disposal Act ("SWDA"), as amended by the Resource Conservation and Recovery Act ("RCRA"); the Hazardous Waste Management System; and the Occupational Safety and Health Act of 1970 ("OSHA"). Lessee shall not be liable for obligations

and liabilities arising under this Paragraph which arise out of events or actions occurring prior to the Term. Obligations and liabilities occurring during the Term of this Lease shall survive the assignment of this Lease and the expiration, termination, cancellation or release of record of this Lease.

17.2 Premises Leased “As-Is”. With respect to the condition of the Premises, Lessor makes no representation concerning the existence of any Hazardous Materials or the state of compliance with Environmental Laws. The Premises is leased on an “as-is”/where-is basis.

17.3 Environmental Laws. Lessee represents, warrants and agrees that it will conduct its activities on the Premises in compliance with all applicable Environmental Laws. Lessee shall be liable for any Hazardous Material on the Premises or for the migration of any Hazardous Material to other properties from the Premises or for the release of any Hazardous Material into the environment in violation of applicable Environmental Laws, but only that arising solely from Lessee’s use of the Premises during the term of the Lease as defined in Paragraph 3. Lessee shall be responsible for, and promptly conduct any investigation and remediation as required by any Environmental Law or common law, of all spills or other release of Hazardous Materials, that may occur as result of Lessee’s use of the Premises. Nothing herein shall be construed to relieve agents, contractors, or employees of Lessee from liability for Hazardous Materials arising from the activities of said agents, contractors, or employees on the Premises.

18. Ownership of Leasehold Improvements; Surrender of Premises. During the Term, ownership of any improvements constructed or installed on the Premises under this Lease or under any prior lease with WWFR shall be in Lessee. At the expiration of the Term or the earlier termination of this Lease, Lessee shall promptly quit and surrender the Premises and shall, if so required by Lessor, remove its improvements and its personal property, trade fixtures and equipment, or any portion thereof, from the Premises and restore the Premises to a condition reasonably approximating that existing prior to the letting of the initial lease with WWFR. Any improvements, personal property, trade fixtures and equipment not required to be removed by Lessor, or otherwise remaining on the Premises thirty (30) days after the termination of this Lease, shall, at Lessor’s option, become the property of Lessor or Lessor may have the property removed or stored, at Lessee’s expense.

19. Assignment and Subleasing. Lessee may sublease the Premises in whole or in part to WWFR, or its successor in interest, being any entity performing substantially the same statutorily mandated body transport services for Lessee so long as WWFR, or its successor in interest, maintains its non-profit status and utilizes the Premises for those purposes set forth in Paragraph 6 of this Lease. Except as expressly permitted herein, Lessee shall not assign this Lease or sublet the Premises or any part thereof without the prior written consent of Lessor.

20. Binding Effect. Subject to the provisions herein, this Lease shall extend to and bind the Parties, their successors and permitted assigns.

21. Prohibition on Gifts. North Carolina General Statute §133-32 prohibits the offer to, or acceptance by, any employee of Lessor of any gift from anyone with a contract with Lessor, or from any person seeking to do business with Lessor. By execution of this Lease, Lessee attests,

for its entire organization, including its employees or agents, that it is not aware that any such gift has been offered, accepted, or promised by any employees of its organization.

22. Smoking Restrictions. Lessee shall enforce within the Premises the smoking regulations established pursuant to North Carolina General Statute §130A-493 and any future legislation which restricts smoking.

23. Applicable Law. This Lease shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina, regardless of conflict of law principles.

24. Complete Agreement. This Lease contains the entire agreement between the Parties regarding the subject matter hereof and each Party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Lease not specifically set forth herein.

25. Amendment. No amendment, modification, alteration or revision of this Lease shall be valid and binding unless made in writing and signed by Lessee and Lessor.

26. Interpretation. The terms “lease,” “lease agreement” or “agreement” shall be inclusive of each other, and also shall include renewals, extensions, or modifications of this Lease. Words of any gender used in this Lease shall be held to include any other gender, and words of the singular shall be held to include the plural and the plural to include the singular when the sense requires. The section or paragraph headings and the titles are not a part of this Lease and shall have no effect upon the construction and interpretation of any part hereof.

27. Terms. Capitalized terms used in this Lease shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

28. Effect of Waiver or Forbearance. No covenant or condition of this Lease can be waived except by written consent of the Parties. A waiver of any covenant or condition on one occasion shall not be deemed a waiver of said covenant or condition on any subsequent occasion unless such fact is specifically stated in the waiver. Forbearance or indulgence by Lessor in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by Lessee, and until Lessee has completely performed all covenants and conditions of this Lease, Lessor shall be entitled to invoke any remedy available to Lessor under this Lease or any law or equity despite such forbearance or indulgence.

29. Severability. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

30. Construction. No provision of this Lease shall be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party's having or being deemed to have prepared or imposed such provision.

31. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

32. Memorandum of Lease for Recording. At the request of either Party, Lessor and Lessee shall execute a memorandum of this Lease for recording in the public records at the requesting Party's sole cost and expense. The memorandum of Lease shall set forth the Parties, provide a description of the Premises, specify the Term and incorporate this Lease by reference.

33. Notices. All notices, requests and other communications hereunder shall be deemed to have been fully given, by either Party to the other, when made in writing and either deposited in the United States mail (sent certified, return receipt requested); personally delivered; or transmitted by overnight courier for next business day delivery to the addresses of Lessor and Lessee set forth below, or to such other addresses as the Parties may, from time to time, designate by written notice.

To Lessor: State Property Office
Attn: Manager, Leasing and Space Planning Section
1321 Mail Service Center
Raleigh, North Carolina 27699-1321

To Lessee: Wake County Property Officer
Post Office Box 550
Raleigh, North Carolina 27602
Attn: Director, Facilities, Design, and Construction
Attn: Director, General Services Administration
Attn: Wake County Attorney

[Remainder of Page Intentionally Left Blank – Signatures Begin On Follow Page]

IN TESTIMONY WHEREOF, this Lease has been executed by the parties hereto, in duplicate originals, as of the dates set forth in the notary acknowledgments below.

LESSEE:

COUNTY OF WAKE

By: _____

Print Name: _____

Title: _____

ATTEST:

_____(Seal)
Clerk

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public in and for the aforesaid County and State do hereby certify that _____ personally came before me this day and acknowledged that he/she is Clerk of the County of Wake and that by authority duly given and as an act of the County of Wake, the foregoing instrument was signed by _____, its _____ (title), attested by himself/herself as Clerk and sealed with the common seal.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the _____ day of _____, 2018.

My Commission Expires: _____
Notary Public
Print Name: _____

LESSOR:

STATE OF NORTH CAROLINA

By: _____
Governor

ATTEST:

Secretary of State

APPROVED AS TO FORM:
JOSH STEIN, Attorney General

By: _____
Special Deputy Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, _____, a Notary Public in and for the County of _____ and State of North Carolina, do hereby certify that ELAINE F. MARSHALL, Secretary of State of North Carolina, personally came before me this day and acknowledged that she is Secretary of State of North Carolina, and that by authority duly given and as the act of the State, the foregoing instrument was signed in its name by ROY COOPER, Governor of the State of North Carolina, sealed with the Great Seal of the State of North Carolina, and attested by herself as Secretary of State of North Carolina.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the _____ day of _____, 2018.

My Commission Expires: _____

Notary Public
PrintName: _____