

**STATE OF NORTH CAROLINA**

**WAKE COUNTY**

**INTERLOCAL AGREEMENT For Funding and  
Construction of Zebulon Fire and EMS Station**

This AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2025, by and between the Town of Zebulon, a municipality of the State of North Carolina, hereinafter referred to as “the Town”, and Wake County, a public body politic and corporate of the State of North Carolina, hereafter referred to as “the County”, The County and the Town being jointly referred to herein as “the Parties”.

**WITNESSETH:**

**WHEREAS**, Wake County Emergency Medical Services (“Wake County EMS”) is a department of Wake County, North Carolina providing emergency medical services throughout the County as a function of County government; and

**WHEREAS**, Wake County EMS established a Master Plan for EMS Stations in 2008, updated in 2019, that includes co-locations of EMS units within a fire station as a first consideration when deploying ambulances; and

**WHEREAS**, since 2008, Wake County EMS has been co-located in 22 different fire stations, representing 10 different county and municipal fire departments; and

**WHEREAS**, the Town has expressed a desire to build a new main Fire Station in order to provide optimal fire protection services within Zebulon and the Wakelon Fire District; and

**WHEREAS**, the Town owns a 10.97-acre parcel adjacent to the Zebulon Town Administration Center property on North Arendell Ave., Zebulon, NC; and

**WHEREAS**, Wake County EMS and the Town of Zebulon desire to co-locate a combined Fire and EMS Station on said property, to meet both the needs of Wake County EMS and the Town of Zebulon.

**WHEREAS**, on July 1, 2022, Wake County and Zebulon entered into a Memorandum of Understanding (“MOU”) establishing the conditions that must occur in order to proceed with the plan for Zebulon Fire and EMS Station project; and

**WHEREAS**, the Town is eligible for federal Community Project Funding/Congressionally Directed Spending from USDA–Rural Development Rural Housing Service for the Zebulon Fire Station Co-Location in the amount of \$ 7,500,000, which will be allocated to the overall project cost; and

**WHEREAS**, the Town and the County have agreed to share the cost of construction of the fire and EMS station that exceeds the amount of received USDA Grant funds because the facility will serve both the Town and the County; and

**WHEREAS**, the Town will fund fifty one percent (51%) of the project costs in excess of the USDA Grant funds and the County will fund forty nine percent (49%) of the project costs in excess of the USDA Grant funds; and

**WHEREAS**, the Town will own and operate the facility upon completion; and

**WHEREAS**, the parties enter this agreement pursuant to the authority of N.C.G.S. §160A-460 et. seq. and resolution of their respective governing boards.

**WHEREAS**, on June 12, 2024, Wake County and Town of Zebulon entered into a First Amendment to the Memorandum of Understanding to set forth the increased design scope, Construction Manager at Risk pre-construction and to extend the term of the agreement.

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions contained in this Interlocal Agreement accruing to the benefit of each of the Parties and other good and valuable consideration, receipt and sufficiency of which is acknowledged by the TOWN and the COUNTY, the Parties agree as follows:

## **ARTICLE 1 RECITALS and PURPOSE**

### **1.01 Recitals**

The Recitals are incorporated into this Agreement.

### **1.02 Purpose**

The purpose of this Agreement is to undertake the design and construction of the Fire and EMS Station on property owned by the Town. The Town shall hold all design and construction agreements for the Project. The Parties agree that the County's Facilities, Design and Construction Department shall act as the Owner's Representative during the entire design and construction process, provided however, the Town shall identify Town representatives to participate in the design and construction process together with the County representative then serving as the Owner's Representative. The Town shall serve as lead agency under the Construction Manager at Risk form of construction contract pursuant to N.C.G.S. 143-128 and in accordance with schematic design plans reviewed by the Town's governing authority and the Plans and Specifications approved by both parties. This Agreement addresses the cost, construction, ownership, use, future maintenance and other rights and responsibilities for the Project agreed upon by the parties and necessary to commence construction.

## **ARTICLE II DEFINITIONS**

**2.01 "Ambulance Service Franchise"** shall mean a franchise issued by the Wake County Board of Commissioners pursuant to N.C.G.S. 153A-250 and Wake County Ordinance 111.04.

**2.02 "Approved Change Order"** means change orders for County components prepared and executed in accordance with Exhibit "C".

**2.03 “Approved Plans and Specs”** means and refers to the plans and specifications to be prepared by the Architect and approved by the Parties and by the Town of Zebulon and their regulatory capacity and other governmental authorities, as the same may be subsequently modified in accordance with this Agreement. Additionally, plans shall be reviewed and approved as required by the USDA Community Facilities Grant Agreement.

**2.04 “Construction Documents”** means the written instruments executed by the Town of Zebulon as lead agency, procurement agent and ‘Owner’ and the Construction Manager at Risk (“CM”) and includes contractor bidding requirements, contract forms, contract conditions (general, supplemental, and other), architectural and construction information, drawings, plans and specifications (as approved by Parties), addendum issued prior to issuing the contract, all related to Project, which will be binding on the CM. The CM Guaranteed Maximum Price Contract is also considered a construction document.

**2.05 “Construction Manager at Risk” or “CM”**, means Monteith Construction Corp., and its authorized and designated representatives.

**2.06 “Construction Agreement”** means the contract executed by the Contractor and the CM.

**2.07 “Contractor”** means the person or entity with whom the CM contracts for the construction of the Project, customarily referred to as “Trade Contractor” or “Subcontractor.”

**2.08 “Construction Costs”** mean the labor, materials, and construction management costs to construct the Project.

**2.09 “Design Costs”** mean the actual costs and expenses paid in connection with design, engineering, surveying, testing, inspections, construction administration, and close-out of the Project.

**2.10 “EMS Portion”** shall mean the use of not more than 20% of total Fire Station space by Wake County EMS, which EMS Portion includes approximately 3,318 square feet of dedicated space of the total approximate 24,862 square foot Fire Station building along with associated Wake County EMS shared space use.

**2.11 “Substantial Completion” or “Beneficial Occupancy”** means that point at which the Project, as determined by the Architect, is sufficiently complete in accordance with the Contract Documents that it can be beneficially occupied by the County for its intended use, all necessary permits and permissions for beneficial occupancy and utilization having been obtained by the Contractor and guarantees and warranties commence.

**2.12 “Final Completion of Project”** means the point at which the CM has, as determined by Town, the County as Owner’s Representative, and the architect: completed the Project. The Parties have taken beneficial occupancy of the Project; all punch lists have been completed; all as-built drawings, operation and maintenance manuals, warranties and other Project records have been delivered to the Parties; all waivers and releases have been negotiated and executed; all consents of surety to final payment have been delivered and the one-year guaranty and/or warranty period has expired.

**2.13 “Operational Costs”** means the costs to operate, clean, maintain, repair and periodically service components of the Project. Operational Costs do not include capital improvements or replacements. Operational costs will be further defined and allocated in a Utilization Agreement.

**2.14 “Fire Station”** means a new Town of Zebulon shared Fire and EMS station of approximate 24,862 square feet of building with approximately 3,318 square feet dedicated to EMS, and associated sitework which includes parking lot, walkways, utilities, dumpster enclosure associated with the project. The final interior layout of the Fire Station at the execution of this Agreement is attached as Exhibit “D” and incorporated herein by reference.

**2.15 “Project Costs”** means the Design Costs and Construction Costs, including all costs related to construction administration by the CM Team, permitting, and utility connections. Project costs also include agreed upon construction allowances, bid alternates, owner construction testing, furniture and equipment, Project Reserve Costs, as defined in C-9, and project contingencies. County’s share of the Project Costs shall not exceed the approved project budget without approval of the County Board of Commissioners.

**2.16 “Project”** means the construction of the Fire Station as more fully described in Section 4.02.

**2.17 “Project Site”** means area of Town property necessary to accommodate the Project as further described in Section 4.01 and on the approved site plan. The approved site plan at the execution of this Agreement is attached as Exhibit “A” and incorporated herein by reference.

**2.18 “Work”** means all the work and services to be performed by CM, Architect and Trade Contractors in designing and constructing the Project.

### **ARTICLE III**

#### **TERM, AMENDMENT, TERMINATION, and NOTICE**

**3.01 Term.** This Agreement shall be effective upon the properly authorized execution of the Agreement by both Parties and shall continue in effect for five (5) years or until the Final Completion of Fire / EMS Station and execution of all superseding documents required by this ILA, whichever comes first (“Term”). The Parties may agree to an earlier termination in writing with the approval of and execution by their respective Managers when all responsibilities of this Agreement have been completed or replaced with superseding documents. The payment obligations set forth herein shall continue under the terms of this Agreement and shall be incorporated into any superseding documents along with all remedies and provisions related to such payment obligations contained herein.

**3.02 Amendment.** This Agreement may only be amended by a writing signed by the Parties. To propose an amendment to Agreement, either Party may submit the proposed amendment and the reasons for the proposed amendment in writing to the other Party per the Notice provisions in this Article III. If the Parties agree to the proposed amendment, a written amendment to Agreement shall be executed. The Parties may enter into amendments that do not have financial implications for either Party with the approval of and execution by their respective Managers. All other amendments shall require approval by the respective governing boards of the Parties.

**3.03 Termination.** This Agreement may be terminated by either Party upon breach of this Agreement by the other Party, provided that the non-breaching Party has notified the breaching Party in writing and provided thirty (30) days from the notification to allow the breaching Party to cure the breach. If the breach remains uncured after thirty (30) days, or any reasonable mutual extensions thereof, the non-breaching Party may terminate this Agreement upon ten (10) days written notice. Notwithstanding any

provision herein, in the event of breach or non-payment of the payment obligations herein, the Parties shall be entitled to such legal or equitable remedies as may be available, including specific performance.

**3.04 Federal USDA ("USDA") Funding.** The Parties acknowledge and agree that the obligations under this Agreement are contingent upon the continued availability of federal funding for the Project. If USDA funding is reduced, suspended, or terminated by the granting agency, the Parties' obligations under this Agreement shall be adjusted accordingly, or if necessary, terminated as set forth below. If any Party receives notice that USDA funding impacting the Project will be reduced or terminated, such Party shall promptly notify the other Party in writing. Upon receipt of such notice, the Parties shall immediately confer to determine alternative funding methods and continued project feasibility. If the Parties determine that the Project cannot continue due to the loss of funding, this Agreement may be terminated by mutual written agreement or by any Party upon 60 days notice to the other Party. Any USDA funds that remain unspent as of the effective termination date shall be returned to the granting agency in accordance with federal requirements.

**3.05 Notice.** Any notice required by this Agreement shall be in writing and delivered to the Parties at the following addresses:

**For Wake County:**

Wake County Manager  
Wake County Justice Center  
301 S. McDowell St.  
Raleigh, NC 27601

With a copy to

Wake County Attorney  
Wake County Justice Center  
301 S. McDowell St.  
Raleigh, NC 27601

**For Town of Zebulon:**

Town Manager  
Town of Zebulon  
1003 N. Arendell Avenue  
Zebulon, NC 27597

With a copy to

Town Attorney  
c/o Town of Zebulon  
1003 N. Arendell Avenue  
Zebulon, NC 27597

**3.06 MOU Superseded.** Upon the execution and delivery of this Agreement, this Agreement shall constitute the definitive Agreement between the Parties regarding all matters relating to the Project, including the MOU dated July 1, 2022, as amended, is terminated.

**3.07 Survival of Terms Upon Termination.** Those obligations concerning enforcement of warranties and representations which by their nature should survive the termination of this Agreement, as well any other documents executed in accordance with the terms and conditions herein shall survive the termination of this Agreement.

## ARTICLE IV

### OWNERSHIP OF THE PROJECT SITE

**4.01. Town Property.** Town owns property adjacent to the Zebulon Town Administration Center on North Arendell Ave., Zebulon, NC. The fire station will be built on a new 5.176 acre Parcel on this property at 201 W Judd Street (hereinafter referred to as the “Fire Station Parcel”).

**4.02 Description of Project.** The Town and County desire to construct a shared Fire and EMS facility consisting of an approximate 24,862 square feet building with four (4) full apparatus bays for Town apparatus and one (1) full bay for Wake EMS along with related sitework providing sixty-two (62) parking places on property currently owned by the Town. The Town of Zebulon Fire Department will utilize 16,684 dedicated square feet. Wake EMS will utilize 3,318 dedicated square feet. The Fire Department and EMS will share the remaining 4,512 square feet, including support spaces.

**4.03 Town as Lead Agency and Procurement Agent.**

a. Agency created. The Town of Zebulon is lead agent and shall hold all design and construction agreements for the Project. The Parties agree that the County’s Facilities, Design and Construction Department shall act as the Owner’s Representative during the entire design and construction process, provided however, the Town shall identify Town representatives to participate in the design and construction process together with the County representative then serving as the Owner’s Representative. The Town is the designated “Owner” in construction documents. County as a project partner and Owner’s Representative shall have full access, at reasonable times and in a reasonable manner to all Construction Documents and agreements related to the Project.

b. The Town as lead agent and Owner is responsible for applying for and pursuing all permits and other approvals necessary for construction of the Project. The County as Owner’s Representative shall work with the Consultant and Construction Manager-at-Risk “CMAR” team(s) to assist in permitting and approval processes.

c. The Project shall conform to the approvals granted by the Town of Zebulon and by the governing board of the Town of Zebulon and shall be designed and constructed to meet all requirements of the North Carolina State Building Code, the approved site plan and all other applicable laws and regulations. Additionally, plans shall be reviewed and approved as required by the USDA Community Facilities Grant Agreement and any additional approval process that may be required for receipt of Federal Funds.

d. The County, as Owner’s Representative, shall ensure that Town representatives are and remain closely involved in the final design and construction process, with regard to Town components to the Project.

e. The County and the USDA shall be named as an additional on all insurance policies obtained or maintained in connection with the Project. The Town shall require a copy of all Certificates of Insurance received by Town and evidencing such coverages to be delivered to the County. Town shall ensure that the Construction Documents and its contracts with the CM Team to purchase and maintain insurance as is appropriate for the Work being performed for the duration of the Project, and that such insurance requirements are imposed by CM Team on their Trade Contractor, subcontractors, and consultants.

**4.03 Indemnification.** Any indemnification of Town in Construction Documents or any other agreement in connection with Project shall also run to and indemnify the County. To this end, the Town shall ensure that the Construction Documents and its contracts with the CM Team specifically require contractors, subcontractors, consultants and other parties to indemnify the County as well as the Town.

**4.04 Ownership of Design Documents.** As the Town will own the Fire Station, the Town shall retain ownership and use of the design work product for the Fire Station, and all areas included within the Project Site including the designated surface lot parking spaces and commercial container area, including but not limited to paper and electronic copies of drawings, renderings, plans, specifications, and Owner Maintenance Manuals. The Town shall retain ownership and use of the design work product commissioned by the Town for the remainder of the site under the Town's ownership and control, including but not limited to paper and electronic copies of drawings, renderings, and plans.

## **ARTICLE V PROJECT FUNDING**

**5.01 Acceptance of GMP Proposal.** The Town received a Guaranteed Maximum Price ("GMP") Proposal on July 1st, 2025. The Guaranteed Maximum Price of the Construction Cost for the Project Construction from the Construction Manager-at-Risk "CMAR" is **\$13,920,277** based on the approved plans and specs.

**5.02 EMS Shared Cost Basis** shall be the cost of the GMP plus other known project costs as set forth in Exhibit "B-1". This amount is based on 16% of the EMS shared project costs.

Note that the Shared Cost Basis does not equal the total project budget commitment for Wake County EMS, as it does not include the additional EMS Project contribution for Project Reserve Funds, outlined in Exhibit C.

The Total EMS Portion of the Shared cost Basis for Phase 3 - Construction is \$1,090,013.

**5.03 Fire Tax Shared Cost Basis** shall be the cost of the GMP plus other known project costs as set forth in Exhibit "B-2". This amount is based on 33% of the Fire Tax shared project costs.

Note that the Shared Cost Basis does not equal the total project budget commitment for Wake County Fire Tax, as it does not include the additional Fire Tax Project contribution for Project Reserve Funds, outlined in Exhibit C.

The Total Fire Tax Portion of the Shared cost Basis for Phase 3 - Construction is \$2,273,617.

**5.04 The Town Commitment.** The Town is financing its share of Project Costs under this Agreement in an amount not to exceed \$4,401,259 from proceeds of installment purchase financing under N.C.G.S. §160A-20 (the "Installment Financing Agreement") and other legally available Town funds. The parties hereto acknowledge that the Installment Financing Agreement will involve encumbrance of the Project by a deed of trust and other security agreements to secure amounts due under the Installment Financing Agreement. The Town has received the approval required from the North Carolina Local Government Commission to proceed with the financing of this Project.

The Town's total project budget commitment for all project costs as defined in 2.15 for Phase 3 - Construction is equal to the sum of the Town's Shared Cost Basis and Town Project Reserve Funding, which totals **\$4,401,259**

The Town's Shared Cost Basis shall be the cost of the GMP plus other known project costs as set forth in Exhibit "B-3". The Total Town Portion of the Shared cost Basis for Phase 3 - Construction is \$3,513,701.

Additionally the Town shall reserve funding for additional project costs as outlined in Exhibit C of this Agreement. The Zebulon Project Reserve Funding of \$887,558.

The Town shall execute installment purchase financing prior to the start of construction per the Letter of Conditions dated 3/28/2024 from the USDA. If financing is not executed, termination of agreement will proceed subject to Section 3.03.

#### **5.05 The County EMS Commitment.**

The Wake County EMS total project budget commitment for all project costs as defined in 2.15 for Phase 3 - Construction is equal to the sum of the EMS Shared Cost Basis and EMS Project Reserve Funding, which totals **\$1,368,660**

The County shall pay to the Town the County EMS portion of the EMS Shared Cost Basis for Phase 3 - Construction, as defined in Article 5.02, upon final approval of this agreement and execution of the Town's financing. This payment of \$1,090,013 to the Town for the EMS Shared Cost Basis portion of the project has been funded in the County Capital Improvement Program for payment in FY25. *Note - The total amount that the County shall pay to the Town upon final approval of this agreement and execution of the Town's financing is \$3,363,630, inclusive of both Fire Tax and EMS portion of the known project costs for Phase 3 – Construction.*

Additionally the County shall reserve funding for additional project costs as outlined in Exhibit C of this Agreement. The Wake County EMS Project Reserve Funding of \$278,647 has been funded in the County Capital Improvement Program.

Upon Final Completion of the Project, the Town and County will reconcile all allowances, change orders, contingencies, sales tax reimbursements, etc. to determine a final project cost. Final resolution of the project costs that results in either an increase or decrease in the County's commitment shall be reconciled in a lump sum payment.

#### **5.06 The County Fire Tax Commitment.**

The Wake County Fire Tax total project budget commitment for all project costs as defined in 2.15 for Phase 3 - Construction is equal to the sum of the Fire Tax Shared Cost Basis and Fire Tax Project Reserve Funding, which totals **\$2,841,457**

The County shall pay to the Town the County Fire Tax portion of the project costs for Phase 3 - Construction, as defined in Article 5.03, upon final approval of this agreement and execution of the Town's financing. This payment of \$2,273,617 to the Town for the Fire Tax portion of the project will be funded through the County Capital Improvement Program. *Note - The total amount that the County shall pay to the Town upon final approval of this agreement and execution of the Town's financing is*



*\$3,363,630, inclusive of both Fire Tax and EMS portion of the known project costs for Phase 3 – Construction.*

Additionally the County shall reserve funding for additional project costs as outlined in Exhibit C of this Agreement. The Wake County Fire Tax Project Reserve Funding of \$567,840 has been funded through County Capital Improvement Program.

Upon Final Completion of the Project, the Town and County will reconcile all allowances, change orders, contingencies, sales tax reimbursements, etc. to determine a final project cost. Final resolution of the project costs that results in either an increase or decrease in the County's commitment shall be reconciled in a lump sum payment.

**5.07 The USDA Grant Commitment.** The USDA is not a party to this agreement, but it is understood that the USDA grant funds will be paid to the Town once the portion of the funding required by USDA to be provided by the Town and the County for approved and agreed upon project costs has been fully expended.

The Town shall serve as the sole recipient and administrator of all grant funds received from the USDA grant related to this Agreement. The Town shall be solely responsible for ensuring compliance with all terms, conditions, and requirements of the USDA grant, including compliance with federal, state, and local laws, regulations, and policies. The County agrees to fully cooperate with the Town in providing documentation or assistance for grant compliance.

If the USDA grant is not awarded, or if awarded funds are insufficient to cover the anticipated costs of the project as set forth herein, the parties shall meet and confer in good faith to determine an alternative funding strategy, potential project modifications, or whether to terminate the agreement. No party shall be obligated to provide additional funding beyond its previously agreed upon contributions unless expressly authorized through a written amendment to this Agreement. If the Parties determine that the project cannot proceed without the USDA grant, this Agreement may be terminated by mutual written consent, with no further obligations or liabilities among the parties except for any costs or commitments already incurred in reliance on the expected funding.

**5.08 EMS Furniture and Equipment.** It is assumed that the Town will procure and install furniture and equipment for the building. A specific allowance has been made for the cost of furniture and equipment that is for the exclusive use of the EMS ("EMS FFE") station, defined in Exhibit "B-1". The County shall fund 100% of EMS FFE through this allowance and with any reserve funds as necessary. EMS FFE shall remain the property of the County.

**5.09 Radio Alerting System.** This system is for the exclusive use of the Fire Department. The system will be paid for jointly by the Town and the Wake County Fire Tax. EMS shall not be a funding participant for the Fire Station Alerting / Radio Alerting System.

**5.10 Fire Station Furniture and Equipment.** Fire Station Furniture and Equipment is for the exclusive use of the Town of Zebulon and the Zebulon Fire Department. This Furniture and Equipment will be paid for jointly by the Town and the Wake County Fire Tax. EMS shall not be a funding participant for the Fire Station Furniture and Equipment.

**5.11 Shared Furniture, Fixtures, and Equipment** Furniture, Fixtures, and Equipment that are located within shared areas of the Building or serve the needs of shared building areas will be considered shared costs, and the Town and County will fund in accordance with the Schedules set forth in Exhibits “B-1” “B-2” and “B-3”. Examples of shared Furniture, Fixtures, and Equipment include, but are not limited to, the furniture and AV Equipment in all shared use spaces as indicated in Exhibit “D”, all residential cooking and laundry appliances, Exercise Equipment, and Cellular Bi-Directional Amplification/Distributed Antenna Systems.

It is assumed that a Public Safety Bi-directional Amplification System (BDA) system will likely be required for the building to increase 800 MHz Public Safety signal. This will be determined after a survey of the constructed station, and an allowance for this system will be carried in the project GMP. The County and Town will fund its portion of the Public Safety BDA system in the same ratio of Project Construction Cost as previously defined.

**5.12 Electronic Security.** With exceptions noted later in this section, the building will be secured by an electronic security system belonging to the Town of Zebulon. This system will control access into the building and at specific locations within the building where necessary to separate Training areas from Living and Office areas, to prevent unauthorized entry to the telecom room, and to prevent unauthorized access into the building from the Apparatus Bay. Card readers at certain interior access locations will include a pin pad option, to allow Wake County staff to circulate within the building without needing a Zebulon issued access card.

One card access entry point at the exterior of the building will be designated for Wake County staff and a separate Wake County electronic security system will control that door as well as the EMS medical storage room.

Both the Zebulon electronic security system and the Wake County electronic security system will be bid out together as a single package under an allowance in the Construction GMP. The costs for these systems will be considered shared costs.

**5.13 Data/Voice Systems.** Zebulon’s Data/Voice network, cabling, and devices within the building are for the exclusive use of the Town of Zebulon and the Zebulon Fire Department.

Wake County Data/Voice network, cabling, and devices within the building are for the exclusive use of Wake County.

The Data/Voice construction bid scope will be bid out together as a single package under an allowance in the Construction GMP. The costs for this bid package will be considered shared costs.

**5.14 Audio Visual “A/V” Systems.** The Construction GMP includes an allowance for general building Audio Visual Systems under the Data/Voice package. General building A/V systems include: Televisions in Fire & EMS Dayrooms, Exercise, Kitchen, and Conference Room, wall mounted CAD monitors throughout the building, and Conference Room virtual conferencing devices. The costs for the initial general building A/V devices will be considered shared costs.

The general building A/V does not include the A/V equipment planned for Training Room / Zebulon Emergency Operations Center. While the construction GMP includes scope for pathways of installation

for future A/V devices in this space, the equipment will be procured by Zebulon outside of the Construction GMP and paid for through Reserve Funds, as a shared cost.

**5.15 Construction Phase Professional Services.** Professional Services during the Construction Phase, as necessary to support the overall Project Construction, will be considered shared costs, and the Town and County will fund in accordance with the Schedules set forth in Exhibits “B-1” “B-2” and “B-3”. Professional Services include, but are not limited to, Architectural and Engineering Construction Administration support, building systems commissioning, and roofing installation monitoring.

If additional design services are necessary to support a change requested by the Town, the cost of these additional services will be borne by the Town.

**5.16 CMT Testing Allowance.** Construction Materials Testing (CMT), Geotechnical Analysis, and Special Inspections necessary to support Construction Phase will be considered shared costs, and the Town and County will fund in accordance with the Schedules set forth in Exhibits “B-1” “B-2” and “B-3”.

**5.17 Permit And Development Fees.** Permit and Development Fees for the Project Construction will be considered shared costs, and the Town and County will fund in accordance with the Schedules set forth in Exhibits “B-1” “B-2” and “B-3”.

**5.18 Payment of Project Costs.** All Project Costs shall be paid by Town, in its capacity as Lead Agency, in accordance with the funding terms. The payments to the Town from the County hereunder are payable solely from funds appropriated for that purpose by the Board of Commissioners of the County in its discretion. Neither the faith and credit nor the taxing power of the County is pledged to the payment of the County payments made hereunder.

**5.19 Sales Tax.** Each subcontractor under contract with the CM shall include sales and use taxes to the Project that are legally enacted at the time the Guaranteed Maximum Price contract is established. The CM shall maintain all tax records during the life of the project and furnish the Town with a complete list of all taxes paid by taxing authorities, invoice number, date, amount, etc.

The Town will track the project sales tax and submit for all refundable sales tax. The Parties agree to allocate the refundable sales tax 51% to the Town and 49% the County.

## **ARTICLE VI**

### **FIRE STATION OWNERSHIP, CONTROL, AND RIGHTS OF USE**

**6.01 Ownership.** Once the Project is operational, the Town will have ownership of the Fire Station.

**6.02 Control.** The Town shall have administrative and security control over the Fire Station, and the County will have administrative and security control over the EMS Station. The Parties will cooperate on matters of mutual concern, including such matters as hours of operation, maintenance of common shared areas and other matters which may arise.

**6.03 Rights of Use.** Prior to occupancy of the Fire Station, the parties shall enter a utilization agreement providing for the County's use of a portion of the Fire Station for EMS purposes ("Utilization Agreement"). The Utilization Agreement shall provide for a term of not less than forty (40) years from Substantial Completion by the County, and shall address the terms and conditions associated with the County's access, operation and maintenance of the EMS portion of the Fire Station. The County's Operational Costs associated with the Utilization Agreement shall be calculated proportionate to County's use and occupancy of the Fire Station and shall be limited to sharing the costs of maintenance and operations. There shall be no rental payment due from the County; provided that the County may be evicted and the Utilization Agreement terminated if the County does not comply with the terms of this Agreement after proper notice and opportunity to cure the breach. Neither party may change the term expectation or add additional financial responsibilities for either party without the approval of both governing boards. The parties to this Agreement understand that the interest payable by the Town under the Installment Financing Agreement is intended to be excludable from gross income for federal income tax purposes and consequently the Town must have a reasonable expectation that use of the Fire Station will be for public purposes during the term of the Installment Financing Agreement. The County covenants in this Agreement, and shall covenant in the Utilization Agreement, that during the term of the Installment Financing Agreement, the County shall carry utilize the Fire Station in furtherance of providing fire services and emergency medical services as a function of County government and not allow activities that constitute a private use of the Fire Station, including any private management agreement that involve the management of any portion of the Fire Station by a private person or entity if such private management agreement does not comply with Revenue Procedure 97-13, as amended by Revenue Procedure 2001-29, or any successor provision. For purposes of this Agreement, the term "private use" means any direct or indirect use in a trade or business that is carried on by any person or entity other than a governmental unit, provided, however, that use as a member of the general public is not considered a private use. For purposes of this section of the Agreement, the United States of America is not deemed to be a governmental unit. Notwithstanding the foregoing, the County, through Wake County EMS, may from time-to-time grant ambulance service franchises for non-emergency ambulance service, convalescent ambulance services, and specialty care transport services in furtherance of the governmental purposes of Wake County EMS but such franchises shall not cumulatively utilize more than 20% of the EMS Portion of the Fire Station at any one time.

## **ARTICLE VII**

### **EXHIBITS AND RELATED DOCUMENTS**

#### **7.01 Exhibits**

The following exhibits are attached hereto and incorporated by reference into this Agreement as if fully set forth herein:

- A. Exhibit "A"      Project Site Plan
- B. Exhibit "B"      Shared Cost Summaries ("B-1" and "B-2") and Payment Schedule ("B-3")
- C. Exhibit "C"      Construction Scope Change Procedures for County Funded Components

## ARTICLE VIII

### OTHER PROVISIONS

**8.01 No Third-Party Beneficiaries.** This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the Parties hereto and shall not confer any rights or remedies upon any person or entity other than the Parties hereto.

**8.02 Ethics Provision.** The Parties acknowledge and shall adhere to the requirements of N.C.G.S. 133-32, which prohibits the offer to, or acceptance by any state or local employee of any gift from anyone with a contract with the governmental entity or from a person seeking to do business with the governmental entity.

**8.03 Governing Law, Venue.** The Parties acknowledge that this Agreement shall be governed by the laws of the State of North Carolina. Venue for any disputes arising under this Agreement shall be in the courts of Wake County, North Carolina.

**8.04 Entire Agreement.** The terms and provisions herein contained constitute the entire agreement by and between the Parties hereto and shall supersede all previous communications, representations, or agreements, either oral or written between the Parties hereto with respect to the subject matter hereof.

**8.05 Severability.** If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

**8.06 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

**8.07 Representations and Warranties.** The Parties each represent, covenant and warrant for the other's benefit as follows:

- A. Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and this Agreement has been authorized by Resolution spread upon the minutes of each Party's governing body. This Agreement is a valid and binding obligation of each Party.
- B. Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either Party is now a party or by which either is bound or constitutes a default under any of the foregoing.
- C. To the knowledge of each Party, there is no litigation or other court, or administrative proceeding pending or threatened against such Party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. The Party's execution and delivery of this Agreement, and its compliance with its obligations under this Agreement, does not require the approval of any regulatory body or any other entity the approval of which has not been obtained.

**8.08 Dispute Resolution.** Notwithstanding any other provision of this Agreement, either Party may contest any decision, action or inaction of the other Party, or an alleged failure of the other Party to comply with the terms of this Agreement. In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate General Court of Justice of Wake County, North Carolina.

**8.09 No Waiver of Non-Compliance with Agreement.** No provision of this Agreement shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any Party hereto at any time to require strict performance by the other of any provision hereof shall in no way affect the right of the other Party to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of any breach of any provision hereof by another Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

**8.10 Governing Law.** The Parties intend that this Agreement be governed by the law of the State of North Carolina.

**8.11 Assignment.** No Party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Parties.

**8.12 Liability of Officers and Agents.** No officer, agent or employee of any Party will be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This section will not relieve any such officer, agent, or employee from the performance of any official duty provided by law.

**8.13 Electronic Version of Agreement.** Any Party may convert a signed original of the Agreement to an electronic record pursuant to procedure and process for converting paper records to electronic records for record retention purposes as approved by the North Carolina General Statutes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

**8.14 Iran Divestment Act.** The Parties hereby certify that they, and all permitted subcontractors, if any, are not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58.

**8.15 Divestment from Companies Boycotting Israel.** Any organization defined under NCGS 147-86.80(2), Divestment from Companies Boycotting Israel, shall not engage in business totaling more than \$1,000 with any company/business, etc. that boycotts Israel. A list of companies that boycott Israel is maintained by the NC Office of State Treasurer, pursuant to NCGS 147-86.81(a)(1). Any company listed as boycotting Israel is not eligible to do business with any State agency or political subdivision of the State.

**8.16 Non-Discrimination.** The Parties hereby agree not to discriminate in any manner on the basis of race, natural hair or hairstyles, ethnicity, creed, color, sex, pregnancy, marital or familial status, sexual orientation, gender identity or expression, national origin or ancestry, National Guard or veteran status,

religious belief or non-belief, age, or disability with reference to the subject matter of this Contract. The Parties agree to comply with the provisions and intent of Wake County Ordinance SL 2017-4.

**8.17 Headings.** Section and paragraph headings contained in this Agreement are solely for the convenience of the Parties and shall not affect in any way the meaning or interpretation of this Agreement.

**8.18 Regulatory Authority.** Nothing in this Agreement shall restrict or inhibit a Party's police powers or regulatory authority.

**8.19 Further Actions.** The Parties agree to cooperate fully and execute any and all further documents and to take all further actions that may be necessary to give full force and effect to the intent of this Agreement.

*{Signature Pages to Follow}*

ATTEST:

TOWN OF ZEBULON

By: \_\_\_\_\_  
Town of Zebulon Clerk

By: \_\_\_\_\_  
Town of Zebulon Manager

(TOWN SEAL)

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

By: \_\_\_\_\_  
Town of Zebulon Finance Officer

ATTEST:

COUNTY OF WAKE

By: \_\_\_\_\_  
Clerk to the Wake County Board

By: \_\_\_\_\_  
Wake County Manager

(COUNTY SEAL)

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

By: \_\_\_\_\_  
Wake County Finance Director



**Exhibit "A"**  
**Project Site Plan**



## Exhibit "B-1"

### Wake County EMS Shared Cost Summary

#### PHASE 1: MOU – Planning, Schematic Design

Description	Total Cost Basis	EMS Portion
Initial Planning Services	\$18,650	\$3,730
Schematic Design & Site Analysis	\$100,000	\$20,000
Community Engagement	\$6,500	0
<b>Total</b>	<b>\$125,150</b>	<b>\$23,730</b>

#### PHASE 2: MOU Amendment #1 – Design and Preconstruction

Description	Total Cost Basis	EMS Portion (% of Total)	EMS Portion (Cost)
Design and Preconstruction Fees	\$975,000	16%	\$156,000

**PHASE 3: ILA – Construction**

<b>Description</b>	<b>Total Cost Basis (In Excess of USDA Grant Funds)</b>	<b>EMS Portion (% of Total)</b>	<b>EMS Portion (Cost)</b>
Dedicated EMS Furniture - Allowance	\$25,000	100%	\$25,000
Zebulon & Wake County Security Systems - Allowance	Included in GMP	16%	Included in GMP
Permit & Utility Development Fees - Allowance	\$67,000	16%	\$10,720
General Building Security System - Allowance	\$85,000 Included in GMP	16%	Included in GMP
Shared Furniture, Fixtures, and Equipment - Allowance	\$120,000	16%	\$19,200
Construction Phase General Professional Services (in Excess of MOU Amendment #1 Funds)	\$39,054	16%	\$6,248
Zebulon & Wake County Data/Voice & A/V Systems - Allowance	\$70,000 Included in GMP	16%	Included in GMP
Construction GMP ("Guaranteed Maximum Price") Contract	\$6,430,277 (\$13,930,277 GMP - \$7,500,00 USDA Grant Funds)	16%	\$1,028,845
<b>Phase 3 – Construction - EMS Shared Cost Basis</b>			<b>\$1,090,013</b>

## EXHIBIT "B-2"

### Wake County Fire Tax Shared Cost Summary

#### PHASE 1: MOU – Planning, Schematic Design

Description	Total Cost Basis	Wake County Fire Tax Portion
Initial Planning Services	\$18,650	\$5,409
Schematic Design & Site Analysis	\$100,000	\$29,000
Community Engagement	\$6,500	0
<b>Total</b>	<b>\$125,150</b>	<b>\$34,409</b>

#### PHASE 2: MOU Amendment #1 – Design and Preconstruction

Description	Total Cost Basis	Wake County Fire Tax Portion (% of Total)	Wake County Fire Tax Portion (Cost)
Design and Preconstruction Fees	\$975,000	33%	\$321,750

**PHASE 3: ILA – Construction**

<b>Description</b>	<b>Total Cost Basis (In Excess of USDA Grant Funds)</b>	<b>Wake County Fire Tax Portion (% of Total)</b>	<b>Wake County Fire Tax Portion (Cost)</b>
Dedicated Fire Station Furniture	\$70,000	39.3%	\$27,510
Zebulon & Wake County Security Systems - Allowance	\$85,000 Included in GMP	33%	Included in GMP
Permit & Utility Development Fees - Allowance	\$67,000	33%	\$22,110
Fire Station Alerting	\$126,000	39.3%	\$49,518
Shared Furniture, Fixtures, and Equipment - Allowance	\$120,000	33%	\$39,600
Construction Phase General Professional Services (in Excess of MOU Amendment #1 Funds)	\$39,054	33%	\$12,888
Zebulon & Wake County Data/Voice & A/V Systems - Allowance	\$70,000 Included in GMP	33%	Included in GMP
Construction GMP ("Guaranteed Maximum Price") Contract	\$6,430,277 (\$13,930,277 GMP - \$7,500,00 USDA Grant Funds)	33%	\$2,121,991
<b>Phase 3 – Construction – Fire Tax Shared Cost Basis</b>			<b>\$2,273,617</b>

## Exhibit "B-3"

### Town of Zebulon Shared Cost Summary

#### PHASE 1: MOU – Planning, Schematic Design

Description	Total Cost Basis	Town of Zebulon Portion
Initial Planning Services	\$18,650	\$9,511
Schematic Design & Site Analysis	\$100,000	\$51,000
Community Engagement	\$6,500	\$6,500
<b>Total</b>	<b>\$125,150</b>	<b>\$67,011</b>

#### PHASE 2: MOU Amendment #1 – Design and Preconstruction

Description	Total Cost Basis	Town of Zebulon Portion (% of Total)	Town of Zebulon Portion
Design and Preconstruction Fees	\$975,000	51%	\$497,250

**PHASE 3: ILA – Construction**

<b>Description</b>	<b>Total Cost Basis (In Excess of USDA Grant Funds)</b>	<b>Zebulon Portion (% of Total)</b>	<b>Zebulon Portion (Cost)</b>
Dedicated Fire Station Furniture	\$70,000	60.7%	\$42,490
Zebulon & Wake County Security Systems - Allowance	\$85,000 Included in GMP	51%	Included in GMP
Permit & Utility Development Fees - Allowance	\$67,000	51%	\$34,170
Fire Station Alerting	\$126,000	60.7%	\$76,482
Shared Furniture, Fixtures, and Equipment - Allowance	\$120,000	51%	\$61,200
Construction Phase General Professional Services (in Excess of MOU Amendment #1 Funds)	\$39,054	51%	\$19,918
Zebulon & Wake County Data/Voice & A/V Systems - Allowance	\$70,000 Included in GMP	51%	Included in GMP
Construction GMP ("Guaranteed Maximum Price") Contract	\$6,430,277 (\$13,930,277 GMP - \$7,500,00 USDA Grant Funds)	51%	\$3,279,441
<b>Phase 3 – Construction – Zebulon Shared Cost Basis</b>			<b>\$3,513,701</b>

## **Exhibit “C”**

### **Construction Scope Change Procedures**

**C-1 Introduction.** This Exhibit shall set forth the rights and obligations of Wake County and the Town with respect to construction scope change procedures for the construction and installation of Components to this Project.

The Town has entered into Construction Documents as “Owner” with authority to approve payment requests as well as executing various construction contracts and other documents upon the County’s consent and approvals as provided in Agreement.

The County, in its capacity as Owner’s Representative, will represent the Town of Zebulon in managing the construction of the Town Components and make recommendations to the Town for project changes. From time to time, during the course of construction of the Project, certain modifications to the Approved Plans and Specs may become necessary, based on the following various factors:

- 1) Field Orders for Minor Variations
- 2) Changes requested by the Parties
- 3) Governmental Requirements (i.e. permit inspection required modifications)
- 4) Unforeseen Site Conditions
- 5) Conflicts in the Approved Plans and Specifications
- 6) Other construction circumstances (i.e. material shortage, alternative assembly method, etc.)
- 7) Fees by Utility Companies (i.e. power, gas, water, fiber, etc.) outside the construction contract but necessary to completion of the Project.

In addition to the procedures outlined in this Exhibit, the Town and County shall follow all construction scope change procedures and approvals required by the USDA.

#### **C-2 Field Orders for Minor Variations.**

Field Orders prepared by the Project Architect that do not require a change order and/or minor variations required to effect the construction of the Project or some part of portion thereof, shall not require pre-approval by the Town so long as the variation does not affect the functionality or intended use of the affected Town Component (for example, moving the location of an electrical outlet), or the aesthetics of the work and provide clarifications or interpretations of the Construction Documents. Field order shall be handled as per the General Conditions of the CM Contract and shall not invalidate the Contract Documents nor release the surety. Field Orders shall not alter the Contract Price and/or provide an extension to Contract Time. The County, as Owner’s Representative, shall provide copies of all Field Orders issued by the Project Architect or County to the Town within three (3) days. Field orders that require a change order shall be handled according to Article C-4.



**C-3 Changes requested by the Town**

The Town shall communicate any requested changes to the Approved Plans and Specifications to the County, as the Owner's Representative, in writing. As the Owner's Representative, The County will issue this request through the defined chain of communication from the Architect to the CM. As soon as reasonably practicable thereafter, the County shall provide the Town with an estimate from the CM of the adjustment, if any, in the total Construction Costs required by such Requested Change Order, and the extent of the adjustment, if any, on the Project Schedule of such Requested Change Order. The County shall thereafter exercise reasonable efforts to complete negotiations of such change acceptable to the Parties as soon as reasonably practicable, but within the limits defined in the Town's General Conditions for Construction, which are part of the Construction Contract, which the County shall use its own internal processes and procedures to review. If the Town and County then affirmatively elects, in writing, to proceed with a Requested Change Order, such changes shall be deemed an "Approved Change Order" and County shall then promptly direct the CM Team to make any needed changes to the Plans and Specifications. Costs of Town requested and implemented changes shall be borne by the Town.

**C-4 Changes Resulting from Other Factors.** The County, as Owner's Representative shall communicate promptly, in writing, to the Town with any changes to the Approved Plans and Specifications that are required by the circumstances described in Article C-1 Items 3-6, and any cost impacts, to the extent such costs can be defined. Time being of the essence for this construction project, it will be imperative for the Town to promptly respond to any time sensitive conditions that arise in this manner. Therefore, the Town shall respond within three (3) business days to the County's notification of change with approval or alternative direction. It will be incumbent upon the County to provide adequate information for the Town to respond. Should the Town fail to respond within (3) business days, the County shall act on behalf of the Town with an appropriate directive to the Construction Team. The County shall then promptly direct the CM Team to make any needed changes to the Construction Costs or Project Schedule. The cost of changes that are required by the circumstances described in Article C-1 Items 3-6 shall be shared by the Town, Wake County Fire Tax, and Wake County EMS in the same percentages and cost sharing basis as outlined in Article V of this Agreement.

**C-5 Utility Installation Premiums.** The County, as Owner's Representative shall communicate promptly to the Town with any additional costs related directly to utilities for Town Components that are outside the construction contract and identified after the date of this Agreement. The Town will respond promptly on how it plans to pay for any utility fee that is identified as Town responsibility.

**C-6 Emergency Changes**

The County, as Owner's Representative shall be permitted to make emergency changes to this scope of work which would otherwise compromise, in the opinion of the County, or CM Team, the integrity or structural strength of the Project, provided that written notice of said changes and associated costs are forwarded to the Town as soon as practicable after notification of such changes of Town Components. The cost of emergency changes shall be shared by the Town, Wake County Fire Tax, and Wake County EMS in the same percentages and cost sharing basis as outlined in Article V of this Agreement.

**C-7 Change Order Process.** The County, as Owner’s Representative shall review all change order requests with the CM Team on at least a monthly basis, and any change order request for Town Components shall be promptly presented (as per C-4) to the Town for review and approval. The Town, as Lead Agency, shall have the authority to execute change orders to the construction contract.

**C-8 Contingency Funds for Approved Change Orders.** Funding for approved Change Orders for Town Components shall be from the Project Reserve Funds Defined in Article C-9

**C-9 Project Reserve Funds** are the funds reserved and controlled by the Owner *outside* of the construction contract to fund the cost of the change orders to the construction scope of work and additional project costs that are not known at the time of Construction GMP. These Funds may also be used for the cost of Furniture, Fixtures, and Equipment in excess of initial allowances, additional consulting fees, additional inspection fees, or other Project Costs. These Funds are outside of, and in excess of the Project Shared Cost basis defined in Exhibits “B-1”, “B-2”, and “B-3”. The Reserve Fund totals held by each party to this agreement are established within this Exhibit and shall be held in reserve separately by Wake County and Zebulon for use throughout the project. Funds from the Wake County Reserve Fund may be transferred from the County to the Town at any time during the project, in order to provide Wake County’s portion (as described within this Exhibit) of the funding for change orders and other contract changes where the Town is the Lead Agent and holds the contract. Wake County Reserve Funds may also be used directly by Wake County to execute a contract for goods or services that are added to Project scope by the County.

For this project, the Project Reserve Funds will also include a dedicated CMAR Shared Reserve, to apply to costs caused by a limited set of circumstances defined within the construction contract as CM Contingency Costs. This amount is limited to 2% of the Cost of Work, and a portion of any remaining funds in this category shall be paid to the CMAR as a change order at the completion of the Project, as defined in the construction contract. CMAR Shared Reserve/ CM Contingency is not intended to be used to defray costs to expand the scope of the Project.

<b>Project Reserve Funds Category</b>	<b>Zebulon Project Reserve Fund</b>	<b>Wake County Fire Tax Project Reserve Fund</b>	<b>Wake County EMS Project Reserve Fund</b>	<b>Totals</b>
General Category Reserve Funds	\$763,867	\$487,805	\$239,842	\$1,491,514
CMAR Shared Reserve (2% of GMP C.O.W.)	\$123,691	\$80,036	\$38,805	\$242,532
<b>Total Reserve Funding</b>	<b>\$887,558</b>	<b>\$567,840</b>	<b>\$278,647</b>	<b>\$1,734,046</b>

## Interior Layout of Fire Station