



HAYWOOD COUNTY
BOARD OF COMMISSIONERS

AGENDA REQUEST

***Must be presented to the County Manager's Office
NO LATER THAN 5 P.M. FRIDAY THE WEEK BEFORE THE MEETING***

DATE OF REQUEST: September 21, 2012

FROM: Junior Ward, Maggie Valley Fire & Rescue, Inc.

MEETING DATE REQUESTED: October 1, 2012

*Regular meetings: First (1st) Monday of the month at 9:00 am
Third (3rd) Monday of the month at 5:30 pm*

SUBJECT: Name Change of Organization

REQUEST: Amend existing contract to reflect name change to Maggie Valley Fire and Rescue, Inc.

BACKGROUND: Name of organization changed to Maggie Valley Fire and Rescue, Inc. In order to have all information up-to-date, contracts must be amended to reflect the name change.

IMPLEMENTATION PLAN: Once approved by Board of County Commissioners all records will reflect Maggie Valley Fire & Rescue, Inc.

FINANCIAL IMPACT STATEMENT: N/A – no change

SUPPORTING ATTACHMENTS: YES X NO _____ HOW MANY? 1

LIST: Amended and Restated Agreement

If yes, one ORIGINAL ATTACHMENT, and 14 copies, copied front and back side of pages, stapled and three-hole punched must accompany the agenda request.

PERSON MAKING PRESENTATION AT MEETING: Junior Ward

TITLE: Maggie Valley Fire & Rescue

PHONE NUMBER: _____

E-MAIL: _____

THIS SECTION FOR OFFICE USE ONLY

Received (Date/Time): _____

County Manager / Clerk to the Board Comments: _____

NORTH CAROLINA

AMENDED AND RESTATED
AGREEMENT

HAYWOOD COUNTY

THIS AMENDED AND RESTATED AGREEMENT made and entered into _____, 2012, by and between the COUNTY OF HAYWOOD, party of the first part, also referred to as "County" and the MAGGIE VALLEY FIRE & RESCUE INC., party of the second part, also referred to as "Maggie Valley" or the "Fire Department".

WITNESSETH:

WHEREAS, North Carolina General Statutes Section 153A-301 (2) provides that counties may provide for fire protection in a service district; General Statutes Section 153A-309 provides that counties may provide for emergency medical, rescue and/or ambulance services in a service district; and North Carolina law does permit such protection to be provided by contracting with any incorporated nonprofit volunteer or community fire department; and

WHEREAS, by Resolution dated October 15, 1979, the Haywood County Board of Commissioners (the "County") did establish, pursuant to Chapter 153A, Article 16 of the General Statutes of North Carolina, a county fire service district, (the "Service District") having made the required findings under said statute, and having concluded that there was a demonstrable need for fire protection and rescue services, that there was an impracticality of providing such services countywide, that it was economically feasible to provide the fire protection and rescue service without unreasonable or burdensome annual tax levies, and that there is a demonstrable demand for fire protection and rescue services by persons residing in the district; and

WHEREAS, by the Resolution of the Haywood County Board of Commissioners referred to above, a special ad valorem tax levy in the said service district, not to exceed ten cents (\$ 0.10) per \$ 100.00 valuation, was approved for the purpose of providing fire and rescue protection in the Service District, said levy to be upon all of the real and personal property listed for taxation within said district as of January 1, 1991; and

WHEREAS, pursuant to an Agreement dated November 19, 1991 between the parties hereto, fire protection services have heretofore been provided and financed, and the parties desire to amend and restate that Agreement as set forth herein; and

WHEREAS, Maggie Valley is a nonprofit corporation organized for fire protection and rescue purposes whose name has been changed from Maggie Valley Volunteer Fire Department to Maggie Valley Fire & Rescue Inc.; and

WHEREAS, Maggie Valley is authorized to service the special fire service district as set forth in this agreement; and

WHEREAS, the County levies and collects taxes and is authorized to appropriate funds for the use and benefit of the citizens of the fire service district; and

WHEREAS, the County desires to grant a long-term contract to enable party of the second part to make long-range plans; and

WHEREAS, the County desires to standardize all its arrangements with tax supported fire departments in the County;

NOW, THEREFORE, in consideration of the premises and the consideration of TEN DOLLARS (\$10.00) from each to the other in hand paid, the parties hereto contract and agree as follows:

1. The County contracts and agrees that it will cause to be assessed or levied a special tax of up to \$ 0.10 per \$100.00 valuation of all taxable real and personal property in the Maggie Valley Fire Service District, unless otherwise limited by law and/or a vote of the people, and will collect said tax as a part of the ad valorem taxes of the County.

2. A special or separate fund shall be maintained by the County for funds collected as a result of said special tax.

3. Provided the terms and provisions of this Agreement are complied with by the Fire Department, current year's taxes, as they are collected by the County, shall be remitted to the Fire Department, as collected.

4. The Fire Department shall provide the necessary equipment and personnel for furnishing adequate fire protection as determined by the North Carolina Department of Insurance, Fire and Rescue Service Division, OSFM, consistent with an ISO rating class 9 or better for all property located within the Service District, and it will furnish said fire protection free of charge to all persons and individuals located in said Service District in an efficient and workmanlike manner by dispatching, upon call of any person within the Service District, the equipment necessary to answer the call with adequate personnel to operate the equipment. The Fire Department agrees to maintain at all times, for fire protection within the Service District, a level of equipment with a minimum of 750 gallons per minute pumping capacity which meets current fire insurance classification requirements.

5. The Fire Department, through the facilities of its fire and rescue department, shall furnish fire protection consistent with a 9 rating by NCDOT, ISO, OSFM for life and structure situated within the Maggie Valley Fire Service District, subject to the availability of water sources, hydrants, and equipment available to the said department, in the discretion of the Fire Chief, or his assistant on duty from time to time. The Fire Chief or his assistant on duty from time to time is hereby vested with the discretion of determining when, and under what circumstances equipment may be removed from the district pursuant to the Mutual Aid Agreement entered into between the various fire departments of the County, and pursuant to the request of the Haywood County Fire Marshal. The Fire Department, under the Mutual Aid or

Automatic aid agreements, shall not be responsible for affording fire protection where the Fire Chief or his assistant on duty determines that life or structure are not endangered.

6. All funds paid to the Fire Department by the County shall be used exclusively to provide fire protection, fire education expense and emergency medical care pursuant to the First Responder/Medical Responder Program under the Haywood EMS System Plan, rescue and/or ambulance services (EMS), within said Maggie Valley Fire Service District, and to any other legitimate fire protection or rescue expenses.

7. It is agreed that the County may, by appointment, inspect all records, books and accounts for the Fire Department at any time that it shall desire; it is further agreed that within six (6) months after the close of its fiscal year, the Fire Department shall present to the County, audited financial statements prepared by a Certified Public Accountant prepared in conformity with generally accepted accounting principles, and furnish other information upon forms provided by the County Finance Officer pursuant to a limited review by that office, as directed from time to time by the County. Where the audit letter sets forth deficiencies which in the sole judgment of the County Finance Officer, are deemed serious, the County may require additional interim audits with a goal of correcting such deficiencies. In lieu of additional interim audits the County Finance Officer may require an agreed-upon procedure whereby the Certified Public Accountant will review the resolutions to the findings of the fiscal year end audit and verify that current procedures are in place and being followed, to cure and prevent further deficiencies. Before incurring any debt for purchase of or improvements to equipment or real property, the County Finance Officer shall be consulted and a determination made as to the feasibility of such purchase or improvement as it applies to the N.C. Budget and Fiscal Control Act. The Fire Department shall present a request before and obtain the approval of the Haywood County Board of Commissioners.

8. The Fire Department agrees to comply with County budgeting procedures and other requirements of state law, and agrees to submit budget estimates to the Board of Commissioners on the standard forms used by County departments. The Fire Department also agrees to use standard line items for accounting devised or consented to by the County Finance Officer from time to time.

9. This contract shall commence upon execution and continue until June 30, 2013. The contract shall then be automatically renewed on a year to year basis unless written notice is given by either of the parties to the other of their intention to cancel same not less than sixty (60) days prior to January 1 of any calendar year. In the event such notice is given of intent to cancel, this agreement shall terminate at midnight on June 30 next following; provided however, that this Agreement may not be terminated by the County if the Fire Department has any indebtedness still outstanding which was outstanding on the date of this Agreement.

10. The Fire Department further agrees to file with the County Finance Officer and the County Fire Marshal a true copy of the Articles of Incorporation, existing by-laws, and any changes made thereto from time to time in evidence of Internal Revenue Service tax exempt status; further, the Fire Department agrees to adopt or amend by-laws which meet all minimum legal requirements, and which by-laws include reasonable provisions enabling interested

property owners within the Service District to participate in the affairs of the corporation at least at an annual meeting, and become members of the Fire Department with authority to vote upon the election of the Board of Directors. A majority of directors must be resident property owners of the Service District who are not active members of the Fire Department. Spouses of other Directors may or may not be eligible to be members of the Board of Directors. The Fire Chief may or may not be eligible to be a member of the Board of Directors. Notice of the place, time, and date of the annual meeting must be given to all members as provided in the by-laws, and to property owners by a notice not more than 14 days, nor less than 7 days prior to the meeting in a newspaper having general circulation in Haywood County. It shall not be a requirement for voting membership that a property owner be an active fire fighter. Membership shall be reasonable, and subject to annual review by the Haywood County Board of Commissioners. All legal requirements of Chapter 55A must be complied with in the operation and management of the Fire Department as a not-for-profit corporation.

11. A. The Fire Department shall provide workers compensation in the amount required by law, and shall carry employers' liability insurance of not less than \$100,000.

B. The Fire Department shall provide automobile liability insurance including non-ownership and hire cares coverage of not less than \$1,000,000 combined single limits. In addition to automobile liability insurance, the Fire Department shall provide automobile physical damage coverage. The County shall be named as additional insured under the provisions of such automobile liability insurance policy.

C. The Fire Department shall provide commercial general liability insurance including premises/operations, contractual liability and completed operations of not less than \$1,000,000 combined single limits. The County shall be named as additional insured under the provisions of such general liability insurance policy.

D. The Fire Department may keep in effect an accident and health insurance policy insuring all members of the Fire Department.

E. The Fire Department shall keep in effect a policy of errors and omissions insurance for each member of the Fire Department, which shall hold the County harmless.

F. A certificate of insurance shall be provided to the County which certifies the coverage required by this Agreement.

12. Nothing in this agreement shall be construed to vest in any third party any right or cause of action against the Fire Department or the County, or the agents or employees of either, for the failure of said Fire Department or its employees to furnish protection, or any right or cause of action against such parties arising out of the manner in which their protection is furnished or activities within the contemplation of this agreement are carried out.

13. The Fire Department agrees to protect, defend, indemnify and hold the County and its officers, employees, and agents free and harmless from, and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities

arising directly out of the performance or failure of performance of those fire protection duties under this contract of which the Fire Department has sole responsibility and control. The County and the Fire Department will co-operate at all times to see that adequate inspection, planning, safeguards, and insurance coverage are maintained as to minimize the risk of liability to both the County and the Fire Department. The County hereby releases the Fire Department, and the Fire Department hereby releases the County to the extent of their respective insurance coverage from any liability for loss or damage caused by fire or any of the extended coverage casualties included in their respective insurance policies, even if such fire or other casualty should be brought about by the fault or negligence of the other party, such party's agents or employees. The County and the Fire Department shall each cause an endorsement commonly known as a "Waiver of Subrogation" endorsement to be attached to the policies, which endorsement shall contain the following wording: "This insurance shall not be invalidated should the insured waive in writing, prior to a loss, any or all right of recovery against any party for loss occurring to the property described herein."

14. If at any time subsequent to the execution of this Agreement, the Waiver of Subrogation endorsement to the parties' prospective insurance policies should result in increased insurance premiums to either or both of the parties, the agreement to add such waiver shall become void, and the endorsement will be stricken from said insurance policies; provided however, the Fire Department shall have the option to reimburse the County for increased premium, and in such event, the Waiver of Subrogation endorsement shall remain in effect.

15. The Fire Department will complete and submit all fire reports to the State of NC Department of Insurance on at least a quarterly basis. The Fire Marshal will obtain these reports from the State Department of Insurance to fulfill the fire incident reporting as required by §61-1 and §143A-52 of the General Statutes of North Carolina.

16. Pursuant to North Carolina General Statutes Sections 163-129 and 163-199, the Fire Department agrees that it will make its facilities and parking areas available to the Haywood County Board of Elections for elections purposes, including precinct meetings, registration and voting. The Fire Department agrees to negotiate in good faith with the Board of Elections a polling place operating agreement in order that the elections activities do not unreasonably interfere with functions normally carried on in the facilities of the Fire Department while meeting federal and state requirements for the conduct of elections, including accessibility requirements.

17. Except where restated herein, that agreement dated November 19, 1991 is hereby terminated.

IN TESTIMONY WHEREOF, the party of the first part has caused this instrument to be executed by the Chairman of the Board of County Commissioners, and attested by the Clerk of the County Board of Commissioners, and the party of the second part has caused this instrument to be signed in its name by its President, attested by its Secretary, and its corporate seal hereto affixed, all by order of its Board of Directors duly given.

HAYWOOD COUNTY BOARD OF
COMMISSIONERS

ATTEST:

BY: _____
Chairman

Clerk

MAGGIE VALLEY FIRE & RESCUE INC.

ATTEST:

BY: _____
President

Secretary