

## North Carolina

## Memorandum of Agreement (September 1, 2017 through June 30, 2018)

## Bladen County

THIS MEMORANDUM OF AGREEMENT, made and entered into by and between Sheriff James A. McVicker, Sheriff of Bladen County, North Carolina an elected official and head of the Office of the Bladen County Sheriff, of North Carolina, hereafter singularly and collectively, referred to as Sheriff and Town of Clarkton, referred to singularly and collectively as "Town";

Whereas, the Town provides law enforcement services to its residents and citizens and has expressed a desire for a sworn deputy sheriff to be within the Town's corporate limits during prime hours;

Whereas, the Town and the Sheriff of Bladen County desire to contract for the services, contemplated, and the Sheriff has consented to provide the requested services; and

Whereas, each, the Sheriff and the Town, are willing to enter into this contract to provide these services upon the terms and conditions hereafter set forth; and

WHEREAS, the respective organizations and individuals have reached such agreement and for good and valuable consideration, the receipt whereof is hereby acknowledged and premised upon the mutual benefits to be derived hereunder, the parties covenant and agree and set out their agreement or memorandum of understanding as follows:

1 **Term.** Although subject to renewal, either expressly or as provided and contemplated under this agreement, the express term of this agreement shall be as follows:

1.1 **Effective Dates.** This agreement shall be effective from September 1, 2017, through June 30, 2018 (the fiscal year of each party being defined as the period from July 1 of the current calendar year and June 30 of the next succeeding calendar year), unless renewed, extended or terminated as provided in this agreement. In the event that this agreement is amended or modified during the term of the effective dates, unless otherwise provided, such amendment or modification of this agreement shall be deemed to relate back to the initial effective date of this agreement.

1.2 **Renewal.** This agreement may be renewed by an express writing for that purpose executed on or before June 30, 2018, to be effective for the next fiscal year, unless terminated during the contemplated period of the contract as provided in this agreement. Unless and until terminated as provided under the terms of this writing, this agreement shall be deemed to be renewed automatically at the end of the effective expiration date and shall be deemed to continue for the next succeeding fiscal year, provided, however, that it is understood between the parties that the parties intend to and shall execute a new memorandum of understanding or memorandum of agreement on or before the last day of each fiscal year.

1.3 **Termination.** Notwithstanding the provisions of paragraphs 1.1 and 1.2 above or any other provision of this agreement, either party to this agreement, either with or without cause, upon notice being served in writing to the other party of not less than 90 days prior to the effective date of such termination, may terminate this agreement either with or without announcing the cause for such termination. In the event of such termination, then the obligations of each party under the terms of this agreement shall cease and become unenforceable as of the effective date of the termination. Unless otherwise expressly provided, an amendment, modification, or agreed alteration of this agreement shall not operate as or shall not be interpreted as a termination of this agreement.

**2 Scope of Services.** The scope of the services to be rendered and the services contemplated under the terms of this agreement; include the provision of deputies and related services for the Town.

**2.1 Duties of the Sheriff.** Without limiting the generality of the foregoing or succeeding provisions of this agreement, the Sheriff agrees to perform and to complete the performance under this agreement as provided under the terms of this agreement, in a fair and reasonable manner, and the Sheriff shall:

2.1.1 Assign two Deputy Sheriffs, and substitutes, so that eighty four (84.0) hours of patrol coverage are provided weekly, to serve inside the Town's Corporate limits. The Deputy Sheriffs will be in a Sheriff's Office vehicle car patrolling or be in presence of the public most of the time during a normal tour of duty. The assigned Deputy Sheriffs and any substitutes are and shall remain at all times under the supervision and control of the Sheriff.

2.1.2 During other times beyond the base eighty four (84) hours per week, the Sheriff will respond to calls for service requested by the Town officials or residents on the same basis as other Bladen County Residents and for specific requests and tasks that are in keeping with the services envisioned by this contract.

2.1.3 In the event of a public emergency requiring substantial law enforcement involvement at a place outside the Town's corporate limits, the Sheriff has the right to withdraw any or all deputies from the Town for the duration of such emergency. In such event, the Sheriff shall provide notice to the Town. If withdrawal of deputies without replacement lasts longer than two (2) hours, the Town shall be entitled to a pro rata reduction in the quarterly payment specified in Paragraphs 3.2 and 3.3 hereof.

2.1.4 The Town, through its Mayor, shall advise the Sheriff from time-to-time where the need for a deputy is greatest in the Town's corporate limits, and the Sheriff will, to the extent it is feasible and consistent with the law enforcement function, place the Deputy Sheriffs at such locations or stage the Deputy Sheriffs to provide services at such location or locations. The Sheriff and the Town agree to determine the prime hour coverage under this Contract so that deputies will be assigned hereunder in a way that best serves the needs of the Town. The Town and the Sheriff agree that the Sheriff's duty to protect extends to the public at large and the Sheriff does not hereby assume a duty to protect any specific individual. The Town shall retain the ultimate and sole responsibility for determining the adequacy of law enforcement protection provided by the Town to persons within its corporate limits.

2.1.5 The Sheriff shall compensate, train, equip, (provisions for motor vehicles shall be detailed in a separate Motor Vehicle User Agreement), supervise, and discipline all Deputies assigned to the Town under the terms of this Agreement. All such deputies shall be sworn and certified law enforcement officers employed by the Sheriff, subject to the orders and commands of the Sheriff or his designee.

2.1.6 Deputies performing duties under this contract shall prepare the incident and investigative reports routinely generated by patrol deputies, which shall be filed as part of the Sheriff's Office Record System.

2.1.7 Deputies will handle any situation in which a violation of the law is believed to have occurred, in a professional manner, within the law and consistent with the policies of the Sheriff.

2.1.8 Deputies assigned shall remain an employee of the Sheriff and responsive to the chain of command of the Sheriff, who may reassign individual Deputies as necessary. The Sheriff will ensure

that any assigned Deputy is properly certified and trained to meet the law enforcement needs of the Town.

2.1.9 The Sheriff shall use good faith efforts to provide law enforcement officers who are qualified to provide protection in a manner consistent with customary law enforcement standards and practices. The Town may request that a given deputy not be assigned to the Town under the agreement. The Sheriff agrees to honor the Town's preference in that regard as soon as practicable and possible. The Town agrees to report immediately to Sheriff any misconduct, improper conduct, or illegal conduct of any deputy assigned to the Town under this agreement.

2.1.10 Work with appropriate Town staff in resolving, in a satisfactory manner, any personnel-related problems of staff assigned by the Sheriff to the Town, and the Town, to the extent feasible and consistent with the policies of the Sheriff and availability of personnel, may request assignment of a specific deputy or request that a particular deputy not be assigned under this agreement.

2.1.11 Submit quarterly invoices supported by time sheets to the Town.

**3 Performance and Duties of the Town of Clarkton.** The Town agrees that it shall observe the terms of the contract and fulfill its obligations under this agreement. The Town shall monitor and assist with regard to the subject matter of this agreement and the substantive and procedural aspects of performance under this agreement to assure compliance by the Town with all pertinent rules, regulations of the Commissions, or governmental and non governmental commissions or agencies whose standards the Sheriff has adopted or to which the Office of Sheriff adheres.

The Town Agrees:

3.1 To budget, as part of its regular budget, funds especially identified to reimburse the Sheriff for expenses incurred as described herein.

3.2 To reimburse the Sheriff for personnel and uniform/equipment expenses incurred in law enforcement coverage up to eighty four (84.0) hours per week during prime hours as specified in this agreement. The Town expense should not exceed One Hundred Four Thousand Dollars (\$90,600) for the regularly assigned Deputy Sheriffs. If additional Deputy services in excess of the base eighty four (84.0) hours are necessary (such as completing an action begun before the end of a shift that cannot be deferred to the following business day), the Deputy will receive Compensatory Time Off computed on a pay period basis, in accordance with Section 207(k), Fair Labor Standards Act. The Town understands this will result in no dedicated Deputy coverage on occasion. The Sheriff shall send the Town a quarterly invoice covering the previous three months of service.

3.3 Payments will be based on quarterly invoices submitted by the Sheriff.

Bladen County Sheriff  
P.O. Box 396  
Elizabethtown, NC 28337

The Town shall pay invoices within thirty (30) days of receipt.

3.4 To reimburse the cost of additional Deputy services in excess of standard operating hours, which will be computed on a pay period basis. The costs of Deputy services over 84.0 hours weekly shall be computed in accordance with Section 207(k), FLSA (overtime rate computed over 28 day periods and 171 hours).

3.5 The Town and the Sheriff agree, the Town may request additional deputies to work special events not subject to this Agreement, under terms of payment that will be negotiated at the time. This contract does not include payment of additional deputies requested by The Town to work special events.

3.6 To provide the assigned Deputy Sheriffs adequate facilities and privacy as necessary to fulfill the assigned law enforcement tasks.

3.7 To work with the appropriate representative of the Sheriff in resolving in a satisfactory manner, any personnel-related problems relating to the Deputy Sheriffs assigned by the Sheriff to the Town.

4 **Remedies.** If either party shall materially breach any performance hereunder, the same shall be a default of this Agreement. The defaulting party shall be liable for reasonable damages as provided by law and for all costs and expenses, including attorney fees incurred by the other party on account of the default, except as otherwise provided herein. Waiver by either party of any breach of the other's obligation shall not be deemed a waiver of any other or subsequent breach of the same obligation. No right or remedy of any party is exclusive of any other right or remedy provided or permitted by law or equity, but each shall be cumulative of every other right or remedy now or hereafter existing hereunder, at law or in equity, and may be enforced concurrently or from time to time.

5 **Compliance with Law, Regulations, Policies, Standards, and Directives.** The Sheriff and the Town agree that as to each, its performance of this Agreement shall comply with all applicable laws, rules, ordinances, executive orders or other requirements of any government or subdivision of government which may govern performance of this Agreement, including The Fair Labor Standards Act, and the Equal Employment Opportunity Act. The Contractor shall comply with, and insure its subcontractors comply with, all local, state, and federal laws, regulations and policies relating to safety and health and employment. Having due regard to the foregoing, parties to this agreement shall comply with all laws, regulations, and ordinances, directives, executive orders, or other requirements of any governments or agencies thereof which may govern its performance under this Agreement, including, but not limited to, the provisions of Chapters 1, 1A, 14, 15A, 122C, 153A, and 162 of the North Carolina General Statutes, equal employment laws, and other applicable law, all applicable State and Federal laws and regulations as well as applicable ordinances of local government, especially those of the County of Bladen, and particularly including, but not limited to DCI, CJIS, and related provisions of law as well as the policies, and directives of the Office of Sheriff and applicable standards, specifically including, but not limited to its CJIS policies and directives, and shall cause to be executed any contracts, further assurances, and the like, requisite to compliance with the same.

6 **E-verify Compliance.** The contractor shall comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes and the terms of N.C. Gen. Stat. § 143-133.3. Without limiting the generality of the foregoing, the contractor as an employer shall comply with and certify at continued compliance with the provisions of N.C. Gen. Stat. § 64-26, and verify the work authorization of the employee through E-Verify. Further, such employer shall retain the record of the verification of work authorization required by such provision of law while the employee is employed and for one year thereafter, and shall make such certification and offer such proof of compliance as may reasonably be required by the other party to this agreement. The failure of the other party to this agreement to comply with this section of this agreement or with the requirements of Article 2 of Chapter 64 of the General Statutes is and shall be a material breach of this agreement, and shall subject the breaching party to the payment of damages to the aggrieved party or to specific performance or other injunctive relief as well as the recovery of damages, costs, and counsel fees.

7 **ADA Compliance/Non-Discrimination/Anti-Retaliation.** Without limiting the generality of the foregoing,

the parties shall comply with Title VI and VII of the Civil Rights Act of 1964, Section 504, of the Rehabilitation Act of 1973, and the Americans With Disabilities Act of 1990 (ADA), Chapter 168 of the North Carolina General Statutes and all requirements imposed by the requisite Federal regulations, rules and guidelines issued pursuant to these Titles with respect to the personnel employed or deployed pursuant to this agreement, and shall conform to and comply with the anti-retaliation policies adopted by the Sheriff of Bladen County.

**8 Modification.** This Agreement may be modified, amended or altered only in writing executed by the parties.

**9 Agency and Authority.** The parties represent that they have the authority to enter this agreement. The Sheriff designates the Captain of the Patrol Division as the exclusive contracting officer on all matters pertaining to this Agreement. The Town agrees that all of its dealings in respect to this Agreement shall be exclusively with the Sheriff's designee. Further, the Town and the Sheriff agree that no modification of this Agreement shall be made except by an instrument duly executed by the parties or their successors in interest.

**10 Severability.** Should any term, duty, obligation or provision of this Agreement be found invalid or unenforceable, such finding shall in no way affect the validity of other terms, duties, obligations, provisions, which shall remain valid and enforceable and in full force and effect.

**11 Applicable Law - Situs.** This Agreement shall be governed by the internal laws of the State of North Carolina without regard to the conflicts of law provisions thereof. The parties mutually agree that the courts of the State of North Carolina shall have exclusive jurisdiction of any claims arising under the terms of this Agreement and that Bladen County, North Carolina, shall be the exclusive venue for such action, and, therefore, the situs for any interpretation of this agreement, its effect or remedies shall be the Superior Court, Bladen County, North Carolina and no other place or forum.

**12 Other and Further Assurances.** In order to give effect to the purposes and terms of this agreement, the parties agree to promulgate and execute such other document or other and further assurances, certificates, agreements, memoranda or the like which may reasonably be required to give effect to this agreement, its terms, conditions, covenants, and purposes upon request and within a reasonable time following such request.

**13 Binding Effect.** The agreement reflected or contemplated under this memorandum and any documents contemplated under it shall supersede all prior agreements with respect to the terms and conditions of this agreement and shall be enforceable and have binding effect unless and until terminated in accord with the provisions of this agreement with respect to termination, and no agency or officer of such agency shall be permitted to access the facility or to submit individuals, patients, or contractors until such agency executes a memorandum of agreement indubitably equivalent to the requisite provisions of this memorandum and agrees to be bound by the terms of this memorandum of agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement.

The Office of the Sheriff of Bladen County NC

By: \_\_\_\_\_ Date: \_\_\_\_\_  
James A. McVicker, Sheriff

Town of Clarkton

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_

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

\_\_\_\_\_

Town of Clarkton Finance Officer

Date: \_\_\_\_\_