

ORDINANCE NO. _____

AN ORDINANCE WAIVING COMPETITIVE BIDDING AND AUTHORIZING A CONTRACT WITH TONTITOWN AREA VOLUNTARY FIRE DEPARTMENT, INC. FOR FIRE PROTECTION SERVICES; AND DECLARING AN EMERGENCY

WHEREAS, contracting with Tontitown Area Voluntary Fire Department, Inc. for operating fire protection services will save public funds; and

WHEREAS, cities are allowed to waive competitive bidding where it is not practical or feasible.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TONTITOWN, ARKANSAS:

SECTION 1. The Tontitown City Council finds, due to the necessity for immediate and unique knowledge of the city and its fire protection needs, that competitive bidding for fire protection services is not practical or feasible, and therefore waives competitive bidding for such services.

SECTION 2. The Tontitown City Council approves, and authorizes the Mayor's execution, of the attached Contract for Fire Protection Service between the City of Tontitown and Tontitown Area Voluntary Fire Department, Inc.

SECTION 3. Emergency Clause. This Ordinance being necessary for the preservation of the public peace, health, and safety, and uninterrupted fire protection services for city residents, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED THIS __ DAY OF _____, 2015.

ATTEST:

RECORDER-TREASURER

MAYOR

SPONSOR: _____

CONTRACT FOR FIRE PROTECTION SERVICE

This Agreement made this _____ day of _____ 2015, by and between the Tontitown Area Volunteer Fire Department, Inc. (hereinafter referred to as "TAFD"), and the City of Tontitown, Arkansas (hereinafter referred to as "City").

WITNESSETH:

WHEREAS, TAFD is a non-profit corporation organized and existing pursuant to the laws of the State of Arkansas, with the expressed "purpose of providing fire protection and related emergency services within the membership area"; and

WHEREAS, the said TAFD membership area included the Tontitown city limits from TAFD'S incorporation in 1979 until mid-2014; and

WHEREAS, City recognizes the valuable service provided to its citizenry by TAFD and desires to make a formal arrangement with TAFD for the operation of fire protection and related emergency services; and

WHEREAS, TAFD has the authority, resources, and capability to provide such fire protection and related emergency services, and has provided services in the past; and

WHEREAS, it is in the interest of City and its citizens to establish the exclusive rights and privileges of TAFD and execute a contract between City and TAFD.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree and covenant as follows:

1. GRANT BY CITY: Subject to the terms, conditions, and stipulations mentioned in this agreement, City hereby grants to TAFD the exclusive right and privilege within the present and all future expansions of the corporate limits of City (1) to provide for the operation of fire protection services to all residents and property owners within said City limits; and (2) to provide such services to the public by use of public right-of-ways, including streets, highways, or other public places of any kind whatsoever within the corporate limits of City, and for any related purpose of providing fire protection and related emergency services to the residents and property owners of City. TAFD is expressly given the right and privilege to use the streets, avenues, roads, highways, alleys, sidewalks and other public places, as now laid out, or hereafter to be established, of any kind whatsoever within corporate limits, for the purpose of providing fire protection and related emergency services to the public from any point within city or to any point, through and beyond the corporate limits of City. This

right shall include the right to use any and all fire hydrants and the water from such fire hydrants in the corporate limits of City, at no charge.

2. OBLIGATIONS OF CITY: City shall pay TAFD one hundred and seventy-five thousand dollars (\$175,000) per year, payable in equal monthly installments beginning March 4 2015, for TAFD to operate fire protection and related emergency services in city. TAFD shall also receive the benefit, without cost to it during the term of this agreement, of (1) exclusive use of the City owned fire department building ("Premises"). Together with all existing City-owned or leased firefighting vehicles, equipment, and supplies; (2) City paying any maintenance and insurance on city-owned firefighting vehicles or equipment, including any liability insurance required by state law on vehicles; (3) City paying for any maintenance of the fire department Premises; and (4) City paying any taxes on the Premises, and casualty and liability insurance, if any, on the premise.

3. OBLIGATIONS OF TAFD: TAFD shall provide any and all additional firefighting and fire protection equipment for providing the fire protection and related emergency services contemplated by this Agreement. In addition, in the provision of these services TAFD shall provide all necessary manpower, including a fire chief and such other full or part-time employees as its budget reasonably allows, and shall use reasonable efforts to secure volunteers. TAFD shall be responsible for the salaries, stipends, and other benefits provided to any employees of it, and city shall be under no obligation to pay such employees. The personnel (including volunteers) of TAFD shall be under the direction, supervision, authority, and control of the TAFD Chief and its Board of Directors pursuant to all fire department policies, rules, and regulations. Subject to exceptions due to personal illness, and personal emergencies and responding to emergency calls in or outside city limits, TAFD will staff City Premises with two (2) paid firefighters. One (1) firefighter shift to begin at 7:00 AM to 7:00 PM, Monday through Saturday and one (1) firefighter shift to begin anytime from 7:00 AM to 9:00 AM and continue until a twelve (12) hour shift is complete Monday through Saturday. All other times, staffing shall be provided by TAFD volunteer firefighters. Additional staffing, as necessary and appropriate, will be provided by TAFD volunteer firefighters. In addition, subject to exceptions in #2 above, TAFD shall be responsible for any and all expenses incurred in connection with the operation of fire protection services, including but not limited to, maintenance of its equipment, training and fuel, TAFD shall provide fire protection services for all buildings and properties within City.

4. Term: This contract shall continue and remain in full force and effect for a period of two (2) years from the date of its execution; provided, however, either party may terminate this Agreement with six (6) months advance notice to the other party in writing. The funding provided for in paragraph 2 above shall continue for such six (6) month period.

5. OPTION TO RENEW: City hereby gives and grants unto TAFD an option to renew this contract at the expiration of the initial term herein set forth, and the consideration for the renewal term will be negotiated at the time of the exercise of the option to renew. TAFD shall give City a 60 day written notice prior to the end of the original two (2) year term of their exercising said option. Renewal shall be subject to mutual agreement of the parties.

6. RULES OF TAFD: TAFD shall provide fire protection under the terms and conditions herein specified, pursuant to state law applicable to fire protection for cities, and pursuant to fire department bylaws and protocols.

7. FIRE PROTECTION OUTSIDE OF THE CITY LIMITS: TAFD, using its employees and volunteers, shall be entitled to also provide fire protection and related emergency services to persons outside the corporate limits of City. The area of its fire protection services shall be at the discretion of TAFD Board of Directors. TAFD shall be entitled to charge such rates and dues to customers outside of the corporate limits of City as it shall determine. In addition, nothing contained herein shall preclude TAFD from canceling the membership of any person or entity outside of City for failure to pay their dues within the time and manner required by TAFD. Notwithstanding anything herein to the contrary, City owned or City leased firefighting equipment and vehicles shall not be knowingly used by TAFD outside of the corporate limits of City unless responding to a request from another governmental agency or fire department for mutual aid.

8. IMMUNITY AND INSURANCE: It is acknowledged and understood that the parties hereto may enjoy tort immunity. Nothing in this Agreement is intended to abrogate or otherwise alter that status. Nothing in this Agreement shall, however, be interpreted to affect any insurance or risk management contract which City has, nor shall it be construed to require City to indemnify TAFD. If City has or acquires liability insurance, City shall name TAFD as an additional insured on its policy, assuming it can do so without increasing the premium amount for that insurance coverage. Nothing contained herein shall require either party to acquire a policy of liability insurance, except as required by Arkansas law.

9. SEVERABILITY: The various provisions and parts of this Agreement are hereby declared to be severable and if any phrase, clause, sentence or paragraph of this Agreement shall be declared invalid by the judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining sentences, paragraphs, or clauses of the Agreement.

10. EFFECTIVE DATE: This agreement shall be effective upon its execution by the president of TAFD and mayor after approval by the city council, which shall be by appropriate resolution or ordinance.

11. COMPLETE AGREEMENT: It is agreed that neither party hereto is relying upon any oral or written information or representation made by the other prior to the signing of this Agreement unless expressly provided herein. Except as provided herein, this Agreement constitutes the entire agreement between the parties and the same shall not be hereafter amended or modified unless reduced to writing and signed by the parties hereto.

12. GOVERNING LAW: This Agreement shall be construed in accordance with and governed by the laws of the State of Arkansas except as preempted by the laws of the United States. Jurisdiction, both personal and subject matter, for any disputes or controversies shall rest With the courts within the State of Arkansas. It is the intent of the parties hereto that this Agreement qualify as a Fire Department Services Agreement under A.C.A. 14-272-301 et seq.

13. BINDING EFFECT: This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, including the composition of any city council hereafter.

14. ACT 833: City of Tontitown shall receive its portion of Act 833 funding.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

CITY OF TONTITOWN, ARKANSAS

BY: _____

Mayor

Attest:

Recorder/Treasurer, City of Tontitown, Arkansas

TONTITOWN AREA VOLUNTEER FIRE DEPARTMENT, INC.

BY: _____

President