

Agreement For Fire Protection Service

This Agreement for Fire Protection Service (the "Agreement") is made and effective on this ___ day of _____ 20__ 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 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 citizens 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 the City and its citizens to establish exclusive rights, privileges, and execute a contract between the City and TAFD; and

WHEREAS, the parties hereto are currently bound by an existing Contract for Fire Protection Service dated the 7th day of March 2017 (the "Contract") and intend for this Agreement to supersede such Contract after December 31, 2018;

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, the City hereby grants to TAFD the exclusive right and privilege within the present and all future expansions of the corporate limits of City to the following:
 - a. to provide for the operation of fire protection services to all residents and property owners within said City limits; and
 - b. 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 the City, and for any related purpose of providing fire protection and related emergency services to the residents and property owners of the 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 the City or to any point, through, and beyond the corporate limits of the City; and

- c. to use any and all fire hydrants and the water from such hydrants in the corporate limits of the City, at no charge.
2. **OBLIGATIONS OF CITY:** The City shall pay TAFD Two Hundred Thousand Nine Hundred and Sixty (\$200,960) Dollars per year, payable in equal monthly installments beginning January 2019 and to be paid within thirty (30) days after such billing, for TAFD to operate fire protection and related emergency services in the City. TAFD shall also receive the benefit, without cost to it during the term of this Agreement, of the following:
 - a. use of the City owned fire department building ("Premises"), together with all existing City-owned or leased firefighting vehicles, equipment, and supplies; and
 - b. the City payment of any maintenance and insurance on City-owned firefighting vehicles or equipment, including any liability insurance required by state law on vehicles; and
 - c. the City payment of any maintenance of the fire department Premises; and
 - d. the City payment of any taxes on the Premises, and casualty and liability insurance, if any on the Premise; and
 - e. the City shall reimburse TAFD for fuel expenses for fire protection and related emergency services that occur within the corporate limits of City, with TAFD to bill City during the first week in December for the applicable previous year's fuel expense commencing in December of 2019 and to be paid within thirty (30) days after such billing.
3. **OBLIGATIONS OF TAFD:** TAFD shall provide any and all additional firefighting and fire protection equipment it deems reasonably necessary for providing the fire protection and related emergency services contemplated by this Agreement.
 - a. 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; and
 - b. TAFD shall be responsible for the salaries, stipends, employment taxes, withholdings and other benefits provided to any TAFD employees or volunteers; and
 - c. 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 TAFD policies, rules, and regulations, subject to exceptions due to personal illness, and personal emergencies and responding to emergency calls in or outside city limits; and
 - d. TAFD shall staff City premises with two (2) paid firefighters. One (1) firefighter shift shall begin at 7:00 AM to 5:00 PM, Monday through Saturday and one (1) firefighter shift shall begin anytime from 7:00 AM to 9:00 AM and continue until a ten (10) hour shift is completed from Monday through Saturday; and
 - e. All other times, staffing shall be provided by TAFD volunteer firefighters. Additional staffing, as necessary and appropriate, shall be provided by TAFD volunteer firefighters; and
 - f. TAFD shall be responsible for any and all expenses incurred in connection with the operation of fire protection services unless otherwise expressed to be a specific obligation of the City in this Agreement, including but not limited to, the maintenance

of TAFD equipment and training. TAFD shall provide fire protection services for all buildings and properties within the City.

4. **TERM:** This Agreement shall continue and remain in full force and effect for a period of four (4) years from the date of its execution (the "Term"); 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 two (2) above shall continue until the earlier of such six (6) month period or the of the Term of this Agreement.
5. **OPTION TO RENEW:** The parties hereto each have the option to renew this Agreement at the expiration of the Term as herein set forth. Unless otherwise mutually agreed, it shall be renewed under the same terms and conditions as set forth herein; provided, however, the annual payments made to TAFD pursuant to paragraph two (2) shall be negotiated at the time of the exercise of the option to renew. A party desiring to exercise the option granted herein shall give the other party at least sixty (60) days written notice prior to the end of the original four (4) year Term of their exercising said option. If the parties cannot agree upon the payment to be made, then there shall be no renewal of this Agreement.
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 the City, in providing such services TAFD shall be entitled to the following:
 - a. the area of its fire protection services shall be at the discretion of TAFD Board of Directors; and
 - b. TAFD shall be entitled to charge such rates and dues to customers outside of the corporate limits of City as it shall determine; and
 - c. 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; and
 - d. TAFD shall be entitled to use any and all City owned or City leased firefighting equipment and vehicles for any lawful purpose, including without limitation, training or responding to a call, whether within or without the corporate limits of the City. In the event such equipment or vehicles are damaged or destroyed in the course of its use by TAFD, TAFD shall replace or repair such damaged equipment or vehicles to substantially the same condition it was before such damage, normal wear and tear and damages covered by insurance, excepted.
8. **IMMUNITY AND INSURANCE:** It is acknowledged and understood that the parties hereto may enjoy or otherwise be covered by various immunity, including by not limited to statutory, tort, sovereign, qualified or legislative immunity. Nothing in this Agreement is intended to abrogate or otherwise alter that status or these immunities. Nothing in this Agreement shall, however, be interpreted to affect any insurance or risk management contract which the City has, nor shall it be, construed to require the 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 or without waiving

any of its immunities. 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 judgement 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 between the parties. The same shall not be hereafter amended or modified unless reduced to writing and signed by the parties hereto. The parties hereto agree that this Agreement shall, effective on January 1, 2019, supersede and replace any existing agreements between them, including the Contract for Fire Protection Service dated the 7th day of March, 2017.
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 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 Service Agreement under Ark. Code Ann. § 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 or the TAFD hereafter.
14. **ACT 833:** It is agreed by the parties that the City of Tontitown, Arkansas shall continue receive its portion of ACT 833 funding.
15. **AUTHORITY:** The parties hereby acknowledge and represent that this Agreement has been duly approved by the parties' appropriate governing bodies and that the individuals executing this Agreement have the power and authority to execute this Agreement on behalf of their respectful parties.

[Signatures on the following page]

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

The City of Tontitown, Arkansas

By: _____

Paul Colvin, Jr., Mayor

ATTEST: _____

Rhonda Ardemagni, Recorder-Treasurer

Tontitown Area Volunteer Fire Department, Inc.

By: _____

Marcus Mason, President

