

CONTRACT AND AGREEMENT

THIS CONTRACT AND AGREEMENT, made and entered into as of July 1, 2018, by and between the TOWN OF PITTSBORO, hereinafter referred to as the "Town," and the PITTSBORO VOLUNTEER FIRE AND RESCUE DEPARTMENT INC., hereinafter referred to as "Fire Department,".

WITNESSETH:

WHEREAS, the Fire Department is an incorporated nonprofit volunteer fire department organized for fire protection purposes; and

WHEREAS, the Town has elected to provide fire protection, fire prevention, rescue and emergency medical services within the corporate limits of the Town by contracting with the Fire Department to provide said services; and

WHEREAS, the Fire Department has the ability to provide and is willing to provide said services within the corporate limits of the Town;

WHEREAS, the parties desire to establish a renewable contract to enable the parties to make long range plans;

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained the parties hereto contract and agree as follows:

1. TERM. This Agreement is effective as of July 1, 2018, and shall continue in effect until June 30, 2023 unless sooner terminated as hereinafter provided. Either party may terminate this Agreement at the end of any fiscal year by giving the other party notice at least one (1) year in advance. In the event a longer term is necessary for the Fire Department to qualify for any long-term financing of approved debt, the parties mutually agree to cooperatively and in good faith negotiate an amendment to this Contact, upon such terms and conditions as may be reasonably acceptable to the Parties, extending the term. A year within the terms of this Contract shall be the Town's fiscal year running from July 1 of one calendar year through midnight of June 30 of the following calendar year.

2. SERVICES PROVIDED. The Fire Department agrees to furnish and provide continuing fire protection, fire prevention, rescue and emergency medical services to all persons and properties lying within the incorporated limits of the Town Pittsboro, NC, by promptly dispatching, upon call from the Chatham County Central Communications voice call or paging system or upon notification of a fire or emergency by any other means, the Fire Department's firefighting and rescue equipment and adequate certified and qualified personnel to operate the same, and then making diligent efforts to control and extinguish all fires, and control or mitigate emergencies and will furnish such services free of charge to all persons and individuals within the Town.

3. DOI CERTIFICATION AND IRS STATUS. The Fire Department shall, at all times, remain certified by the North Carolina Department of Insurance (DOI) and its Office of State Fire Marshal (OSFM), or any successive governmental agencies responsible for fire department certification in the State of North Carolina, with a public protection classification rating of not less than PPC 9S as that term is currently interpreted and defined under the North Carolina Administrative Code (NCAC). During the term of this Contract, the Fire Department shall maintain its status as a nonprofit corporation and tax-exempt status under Section 501 (c)(3) or 501 (c)(4) of the Internal Revenue Code and shall properly and timely file annually any required IRS Form 990.

4. COMPENSATION TO THE FIRE DEPARTMENT.

A. The Town's fiscal year 2018-2019 appropriation to the Fire Department for the provision of fire protection services is \$673,481.00. The amount of funding provided by the Town each year shall be based on the needs projected in the budget estimate submitted by the Fire Department to the Town as approved by the Town; provided, however, that the sum to be appropriated shall be not less than the product of the tax rate recommended by the Chatham County Manager for the Circle City Fire District multiplied by the total valuation of property within the Town subject to taxation by the Town for that fiscal year, including all taxable property annexed into the corporate limits of the Town prior to the commencement of that fiscal year. The annual appropriation to be paid to the Fire Department pursuant to this provision shall be paid in four (4) equal installments prior to the end of each quarter of the Town's fiscal year.

B. The Fire Department will comply with Town budgeting procedures and other procedures provided for by state law and shall submit annual budget estimates in accordance with established Town budget timetables along with a supporting letter of request signed by the Fire Department's president upon approval by the Board of Directors of the Fire Department. The Town will provide, and the Fire Department will use, standard forms for budget submission.

C. All funds paid to the Fire Department by the Town shall be used exclusively by the Fire Department to provide the fire protection, rescue and emergency medical services as provided in this Agreement within the Town.

5. COMPLIANCE. In providing fire protection services the Fire Department agrees that it will provide the necessary equipment, personnel, and other resources as determined necessary by the North Carolina Department of Insurance, Fire and Rescue Service Division, and the Insurance Service Office for all persons and property located within the Town. In providing emergency medical services the Department agrees that it will provide at a minimum the necessary equipment, personnel and other resources as determined by the North Carolina Office of Emergency Medical Services and the individual designated by Chatham County as the Medical Director (the "County Medical Director"). For purposes of this Agreement the term "Rescue" shall be defined as the furnishing services in medical emergencies in accordance with the guidelines provided by the North Carolina Office of Emergency Medical Services and the County Medical Director.

The Fire Department shall operate in compliance with all applicable State and local laws and regulations and the North Carolina Fire Incident Reporting System (G.S. 58-79-45; 11 NC Administrative Code Section 5B.0402). The Fire Department shall submit incident reports to the Chatham County, North Carolina Fire Marshal's Office by the tenth of each month in accordance with said directives. The Fire Department further agrees to file with the Town and the Chatham County, North Carolina Fire Marshal's Office a current list of its Board of Directors and a roster of its members, an annual training report, and a list of apparatus including pump and tank size, and specialized fire suppression equipment, no later than July 31st of each year.

6. INSPECTION OF BOOKS, RECORDS. It is agreed that the Town may inspect all books and accounts of the Fire Department at any reasonable time. It is further agreed that the Fire Department will use its best efforts in good faith to present to the Town, by December 1st next following the close of each fiscal year, an annual audit by a Certified Public Accountant, which audit shall be in conformity with generally accepted auditing standards.

7. PUBLIC INPUT. The Fire Department will file with the Town a true copy of its articles of incorporation and bylaws and shall promptly furnish any changes made thereto. The articles of incorporation or bylaws shall provide citizens of the Town with an opportunity for input in the affairs of the Fire Department at least annually by written notice of the annual meeting of the Fire Department delivered to the Town and published not less than 30 days prior to the meeting and shall vest in the Board of Directors the authority to manage the affairs of the Fire Department.

8. INDEMNIFICATION AND INSURANCE. The Fire Department agrees to save harmless and indemnify the Town from any and all liability and expenses including attorneys' fees, court costs and other costs incurred by the Town caused by the negligence of the Fire Department, its agents and employees. The Department shall purchase and maintain, during the term of this Agreement, and any extension hereof, at least the following insurance coverage:

A. Comprehensive Automobile Liability Insurance with combined single limits of a least \$1,000,000 per occurrence. Coverage shall be provided under a symbol "1". Coverage shall apply, on an excess basis, for hired, borrowed and non-owned vehicles. Coverage shall apply, on a primary basis, for commandeered vehicles. Volunteers or employees shall be considered Insureds, and volunteers and employees shall have coverage in excess of their personal vehicle liability limits when they are using their vehicles on behalf of the Fire Department. Fellow member liability shall be provided. Auto pollution liability shall be included in the coverage.

B. Automobile physical damage coverage shall be provided on an agreed value basis. Coverage shall be included for hired, borrowed or commandeered vehicles without a limit of liability. Coverage shall be provided to bring replacement vehicle up to current national standards, such as NFP A or DOT.

C. Comprehensive General Liability Insurance with limits of a least \$1,000,000 per occurrence and \$2,000,000 aggregate. The aggregate shall apply per named insured and per insured location. The policy shall include the following

coverage: Volunteers or Employees as Insureds, Medical Malpractice, Good Samaritan Liability Coverage, Intentional Acts Coverage for both Bodily Injury and Property Damage, Fellow Member Liability, Non-owned Watercraft, Fire Damage Legal Liability with Limits of \$1,000,000, Pollution Liability arising out of Emergency Operations, Training Activities or Equipment Wash-downs.

D. Directors and Officers Liability Insurance with limits of at least \$1,000,000 per occurrence and \$2,000,000 aggregate. This policy shall include coverage for prior acts. The insureds shall include current volunteers and employees, former volunteers and employees and any persons or organizations providing service to the Fire Department under a mutual aid or similar agreement. Coverage shall include civil rights type suits such as discrimination and sexual harassment; liability arising out of the administration of benefit plans for employees or volunteers and employment related practices suits. Coverage shall include claims made for future compensation and benefits lost from wrongful termination of an employee.

E. Umbrella Liability Insurance with limits of at least \$5,000,000 per occurrence and \$10,000,000 aggregate. The umbrella policy shall provide excess coverage over the Auto Liability Policy, General Liability Policy and the Employer's Liability Section of the Workers Compensation Policy. Volunteers and employees shall be included as insureds.

F. The Department shall maintain Property Insurance protecting against the risk of direct physical loss or damage. Policies covering buildings shall be written on a Guaranteed Replacement Cost Basis with coverage included for Building Ordinance, Flood and Earthquake. Coverage shall include Commandeered Property in the amount of \$250,000. Contents coverage shall be provided on a replacement cost basis. Coinsurance penalties shall not apply.

G. Portable Equipment Coverage shall be provided protecting against the risk of direct physical loss or damage, including electrical surges. Coverage shall be provided on a Guaranteed Replacement Cost Basis.

H. The Automobile Liability Policy, General Liability Policy, Umbrella Liability Policy and Management Liability Policy shall name the Town as an additional insured. The Fire Department shall furnish the Town with certificates of insurance showing the type of policy, limits of liability, name of insurance companies, policy numbers, effective dates and expiration dates of policies.

I. Workers Compensation Insurance covering all volunteers and salaried firefighters meeting statutory limits in compliance with applicable State and Federal Laws.

J. Each policy shall also contain a ten (10) day notice to the Town in the event of cancellation or modification of any stipulated insurance coverage for non-payment of any premium, and a thirty (30) day notice to the Town in the event of cancellation or modification of any stipulated insurance coverage for any other reason.

9. NON-DISCRIMINATION. In connection with the performance of this Agreement, the Fire Department agrees not to discriminate against any employee, volunteer, member or applicant for employment or membership because of race, religion, color, sex, age, disability or national origin. Employees, volunteers, members and applicants must, however, be competent and capable to perform the requirements of the job. The Fire Department agrees to take all reasonable measures to insure that applicants are considered for employment, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, disability or national origin.

10. DEFAULT. Except as otherwise provided herein, the following shall constitute Events of Default under this Agreement:

A. The dissolution, insolvency, receivership, involuntary bankruptcy or voluntary bankruptcy of the Fire Department.

B. The failure of the Fire Department to maintain a continuous certification by the DOI and its OSFM, or any successive governmental agencies responsible for fire department certification in the State of North Carolina, of a public protection classification rating of not less than PPC 9S as that term is currently interpreted and defined under the North Carolina Administrative Code (NCAC).

C. The Town's receipt of written notice from the Fire Department that the Fire Department is unable to provide fire protection services for the Town due to an immediate lack of available volunteer or paid firefighters.

11. EFFECT OF AN EVENT OF DEFAULT. Except as otherwise provided herein:

A. The Town shall provide the Fire Department with notice of the occurrence of an Event of Default. If such Event of Default is not cured or remedied by the Fire Department within ten (10) days after the Fire Department receives such written notice from the Town, the Town shall have the right to terminate this Agreement.

B. Unless prohibited by law, upon an Event of Default terminating this Agreement, the Fire Department shall deliver, release, and convey to the Town all of its equipment, cash, real estate, and other assets owned by the Fire Department (collectively "Fire Department Property") unless it is "Excepted Property". Excepted Property is property (i) that does not impair the ability of the Town or another agency to provide adequate fire protection services in the Town, (ii) was not purchased or acquired wholly or partially with Town funds, and (iii) is listed on Appendix 2, attached hereto and incorporated herein by reference. Excepted Property must be disposed as provided by law. The Town will assume any debt owing on the Fire Department property conveyed to, and accepted by, the Town and agrees to hold the Department harmless with respect to the debt on such Property.

12. ENTIRE UNDERSTANDING. This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements, and understandings related to the subject matter hereto. This Agreement may not be changed or terminated, except as provided herein, and no amendment to, nor waiver of compliance with, any provision or condition hereof shall be effective unless evidenced by an instrument in writing duly executed by the parties hereto.

13. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, legal representatives and assigns, but this Agreement may not be assigned by either party without prior written consent of the other party.

14. WAIVER. The failure of either party to exercise any right granted hereunder to insist upon strict compliance by the other party with its respective obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party to require exact compliance with the terms hereof.

IN WITNESS WHEREOF, the Town has caused this instrument to be executed by the Mayor of the Town and attested by the Town Clerk, and the Fire Department has caused this instrument to be signed in its corporate name by its President, attested by its Secretary, and its corporate seal hereto affixed, all by order of its Board of Directors.

SIGNATURE PAGES FOLLOW

R-223-18

PITTSBORO VOLUNTEER FIRE AND RESCUE DEPARTMENT, INC.

BY: Bunnie W. Joffe Jr.

(President)

ATTEST:

Steve Booker

(Secretary)

(Corporate Seal)

TOWN OF PITTSBORO

By: Cindy S. Perry

ATTEST:

Alice J. Lloyd

Town Clerk

(Town Seal)

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

Heather E. Meacham

Town of Pittsboro Finance Officer