

STATE OF NORTH CAROLINA

CONTRACT

COUNTY OF CUMBERLAND

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THIS CONTRACT, made this 1st day of July, 2011, by and between the CITY OF FAYETTEVILLE, a duly incorporated municipality under the laws of the State of North Carolina (hereinafter "CITY"), and the STONEY POINT VOLUNTEER FIRE DEPARTMENT, INC., a rural fire department duly organized under the laws of the State of North Carolina (hereinafter Volunteer Fire Department or VFD);

WITNESSETH:

WHEREAS, the CITY of Fayetteville is authorized by law to provide fire protection for all of the property in said City; and

WHEREAS, the Stoney Point Volunteer Fire Department, Inc., is a volunteer fire department operating as a non-profit corporation under the laws of the State of North Carolina and owns certain fire equipment, trucks, etc., for fighting fires; and

WHEREAS, the CITY and VFD desire to enter into an agreement for the provision of fire service;

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS. The following words and phrases are defined as set forth below when used in this Contract, unless a contrary meaning is clearly required by the context in which the word or phrase is used:

- a) "Station" means the building located at 7221 Stoney Point Road, Fayetteville, NC 28306.
- b) "Effective date of this Contract" means the date on which the contract was executed by representatives of both parties.



- c) "NFPA" means the National Fire Protection Association, Inc.
- d) "FFD" means the Fayetteville Fire/Emergency Management Department of the CITY.
- e) "Chief" means the person designated by appropriate authority of a party as responsible for the organization and deployment of the party's resources for providing fire protection, emergency medical assistance, and other similar emergency aid. The current VFD Chief is Freddy Johnson, Sr. The current Fayetteville Interim Fire Department Chief is Benjamin Major.
- f) "VFD Service Area" means the area designated to be the primary response zones of the VFD, and which is further depicted in attached Exhibit A. The VFD Service Area shall include all changes which are from time to time adopted by resolution or order.
- g) "Alarm" means any request for emergency assistance to which the FFD normally responds.
- h) "VFD Firefighters" means persons who provide the services on behalf of the VFD as described in this Contract, whether or not such persons are compensated for such services by the VFD or any other entity.
- i) "VFD" means Volunteer Fire Department.
- j) "Response Time" means the elapsed time between notice of dispatch received by the station and arrival at the scene of the emergency incident by the first piece of fire-fighting apparatus.



k) "Turn Out" means the elapsed time between the actual time the station is notified by dispatcher and the actual time the apparatus departs the station on its way to an incident.

l) "Full-Provider" means that the VFD will be the primary agency for providing fire and emergency medical services protection to the VFD Service Areas. The VFD equipment and personnel will be dispatched to all types of alarms occurring in the VFD Service Areas until their units are no longer available. FFD units will respond into the VFD Service Areas when the VFD is not available or when the incident type requires more than one unit to respond.

2. TERM. The effective date for this contract shall be from the effective date of the execution of this Agreement by both parties to and through _____, 2012. After expiration, any renewal shall be negotiated and made in writing by both parties with the understanding that neither party is under any obligation to renew.

3. COMPENSATION. The CITY will pay the VFD for its services during the period above specified, and the VFD agrees to accept for its services during said period, the sum of \$328,240.00, (Three Hundred Twenty Eight Thousand Two Hundred Forty Dollars and No Cents), payable quarterly. The City will issue the first quarterly check immediately following the first City Council meeting of the contract year. Subsequent quarterly payments will be issued immediately following the Council meetings preceding October 1st, January 1st, and April 1st.

4. VFD ACCOUNTING. The VFD shall furnish the CITY by December 31, 2011, an accurate accounting of the 2010 - 2011 actual operating expenses. The VFD shall submit a



proposed operating budget for the 2012 - 2013 contract year to the CITY by December 31, 2011. It is understood that this amount will be reviewed as part of the City's budget process. This review will result in the final contract amount for 2012-2013.

5. INDEMNIFICATION: To the extent allowed by North Carolina law, in the event that the CITY, its elected officials, officers, directors, employees or agents are made parties to any judicial or administrative proceeding arising in whole or in part out of the negligent performance by VFD and/or its agents of any of its obligations under this Agreement, then VFD shall indemnify and hold CITY harmless for that portion of any and all judgments, settlements, and costs (including reasonable attorneys' fees) which CITY incurs or pays in connection therewith that are caused by VFD's negligence.

In the event that VFD, its officers, directors, employees or agents are made parties to any judicial or administrative proceeding arising in whole or in part out of the negligent performance by CITY and/or its agents of any of its obligations under this Agreement, then CITY shall indemnify and hold VFD and its agents harmless for that portion of any and all judgments, settlements and costs (including reasonable attorneys' fees) which VFD or its agents incur or pay in connection therewith that are caused by the CITY's negligence.

The indemnification provided for by this Section shall survive the termination of this Agreement.

6. AUTOMATIC/MUTUAL AID AGREEMENTS. This Contract does not affect in any manner the practices of the parties to provide automatic/mutual aid upon request, and such



arrangement may continue in the same manner as such aid has been provided in the past, which includes automatic/mutual aid upon request for Fire and Rescue/EMS incidents.

7. VFD RESPONSE.

- a) During the term of this Contract the VFD will respond to alarms within the VFD Service Areas in accordance with the terms of this Contract. Such response for the terms of this Contract shall be Full-Provider.
- b) In providing the fire protection services required by subsection a) above, the VFD will cause a response to be made of equipment and VFD firefighters meeting each of the following minimum standards:
 - i) A fire pumper meeting the NFPA 1901 Standard for Automotive Fire Apparatus.
 - ii) A pumper in good operating condition, carrying at least 750 gallons of water and having the ability to pump at least 1,000 gallons of water per minute.
 - iii) The pumper and VFD firefighters responding will be equipped as set forth in the current NFPA 1901 Standard, as a minimum.
 - iv) The VFD firefighter who drives the pumper to the fire scene and returns it to the station must meet the qualifications of a Driver/Operator, as set forth in NFPA Standard 1002.
 - v) At least four (4) VFD firefighters must respond on the first arriving unit, who meet the qualifications of a Fire Fighter I or greater, as set forth in



“Fire Fighter Professional Qualifications, 1992” as published by the NFPA and otherwise known as NFPA 1001.

- vi) The VFD may, at times under certain conditions as established by the FFD Chief, respond with three (3) VFD firefighters who meet the above qualifications.
- c) The VFD will use its best efforts to cause a response to a fire alarm meeting all staffing requirements as set forth herein. The VFD response is to be in the most immediate and professional manner possible; provided that the 90% fractal response times during any six month period of this contract shall not exceed 1 minute 30 seconds for turnout time and 5 minutes 12 seconds for travel time to primary response area..
- d) In providing the emergency medical services, the VFD will cause a response to be made of equipment and VFD firefighters meeting each of the following minimum standards:
 - i) Apparatus and personnel meeting each of the requirements of subsection b) as detailed above, excepting that at least one VFD firefighter must be EMT certified; or
 - ii) With one EMS/Rescue unit, fully equipped and manned with no less than two (2) persons, one of which must be EMT certified, to EMS and rescue alarms in the VFD Service Areas.



- e) The VFD will record and maintain such information as the CITY requires on any alarms to which the VFD responds. Such information will be provided to the FFD when requested by an officer or official of the FFD.
- f) All vehicles, materials, supplies, and other equipment used to respond to alarms pursuant to subsection 7(a) above must be maintained by the VFD in good operating condition at all times and must be inspected weekly by the VFD to determine the condition of such items. Any repairs, replacement or other corrective action necessary to place such items in good operating condition must be made immediately by the VFD upon discovery of the defect. Written records of such inspections and repairs must be maintained by the VFD and copies furnished to the FFD upon request.

8. TRAINING.

- a) Any training programs offered by the FFD Training Division to FFD personnel will be offered to the VFD firefighters.
- b) No charge will be made for any fire or emergency medical training program offered by the CITY to the VFD pursuant to subsection (a) above based upon the use of CITY facilities or the time of CITY personnel in preparing for and presenting such programs. If there are any other actual expenses involved in the VFD's participation in such a special training program, the VFD and FFD Chiefs will attempt to determine a mutually acceptable basis for the VFD's payment of such expense. If such determination cannot be made, VFD firefighters will be



permitted to participate in the relevant training program upon the payment of such expenses as are established by the FFD Chief.

9. RECORDS EVALUATION. Evaluations of VFD departmental records will be conducted by FFD periodically, but not more frequently than once every six (6) months. If one or more evaluations reveal an unacceptable level of performance by the VFD, the Chief of the FFD may, in his sole discretion, require the VFD to perform one or more or all of the following additional requirements:

- a) Submit to more frequent evaluations until the unacceptable performance reaches an acceptable level; and/or
- b) Submit to additional training offered by the FFD at the sole expense of the VFD"; and/or
- c) Repair, maintain, and/or replace any defective vehicles, hose, materials, supplies, or other equipment so that such items are in good operating condition at all times.

10. RADIO CONTACT. The VFD will, at its sole expense, install and maintain one (1) radio equipped with a FFD frequency in each vehicle utilized to comply with this Contract responding to fire alarms in the VFD Service Areas. The radio must permit two-way communications between the apparatus and the FFD dispatcher and meet all FFD radio standards.

11. SCENE CONTROL.

- a) If the VFD arrives at the incident scene before an officer of the FFD, the VFD will use the necessary and appropriate tactics and strategies for the incident scene



and will take the necessary and appropriate measures to deploy the VFD resources to protect life and property and to resolve the emergency situation. Upon the arrival of the FFD officer, the VFD officer in charge of the fire scene will, in accordance with the Incident Command System, brief the FFD officer. If it is mutually agreed by the parties, the VFD officer in charge may relinquish control of the incident scene and the VFD resources to such FFD officer.

- b) If a FFD company arrives at the incident scene at the same time as or before the VFD, the FFD officer in charge of such company shall have control of the fire scene and the VFD resources at the fire scene and in transit.
- c) The FFD will provide information and training to the VFD on all operational procedures of the FFD and any changes thereto as soon as possible and periodically thereafter as may be required to assure coordination between the parties. VFD firefighters responding to a fire alarm in the VFD Service Areas will learn and follow such procedures as soon as possible. Such procedures will be fully applicable to all emergency incident scenes, regardless of whether an officer of the VFD or the FFD has charge of the scene.
- d) On all alarms in the VFD Service Areas, a FFD company may be dispatched in addition to the VFD. Subject to the provisions of Paragraph 12, the FFD and VFD will be dispatched together in accordance with the response criteria as outlined in the CITY of Fayetteville's Computer Aided Dispatch system. The



CITY of Fayetteville's Communications Center will notify the Cumberland County Emergency Communications Center after the initial VFD dispatch.

12. VEHICLE AND EQUIPMENT MAINTENANCE. The vehicles, equipment, materials and supplies described in Paragraph 7(b)(i-ii) above will be located at the Station during the term of this Contract and will be used to respond from the Station under the conditions of Paragraph 7 above. Said vehicles, equipment, materials and supplies will not be out of service for any reason, unless it is then in the process of responding to an alarm or out of service due to repairs. If said vehicles, equipment, materials and/or supplies are out of service from the Station or otherwise unavailable to respond to alarms pursuant to this Contract, the VFD will give notice of such unavailability immediately to the FFD. Such notice will be given by radio to the FFD dispatcher at the time said vehicles, equipment, materials and/or supplies leave the Station or are otherwise unavailable. During the time that said vehicles, equipment, materials and/or supplies are absent from the Station or otherwise become unavailable, the VFD, under existing mutual aid agreements, will still be required to provide fire protection as set forth herein to the VFD Service Area in the event of any problem as addressed in the Contract.

13. INSURANCE.

- a) The VFD shall obtain and maintain insurance as set forth in the following sections throughout the term of this contract without lapse, and in no manner shall deviate from the stated insurance requirements. In the event the VFD fails to maintain insurance as outlined herein, the CITY may at its option, but is not required to, obtain the required insurance at the expense of the VFD.



- b) The VFD's required insurance policies shall be with insurers licensed and lawfully authorized to underwrite and transact business in the State of North Carolina, and having an A.M. Best rating of not less than A-VII.
- c) The VFD agrees to maintain in continuous force and effect during the term of the Contract the following minimum levels of insurance:
 - i) Vehicle: Bodily injury and property damage liability limits of at least \$1,000,000.00 for each occurrence covering all owned, non-owned and hired vehicles. Such insurance must name the CITY as an additional insured.
 - ii) Comprehensive, General Liability: Bodily injury and property damage liability limits of at least \$1,000,000.00 for each occurrence/aggregate. Such insurance must include Contractual liability, personal injury hazards A, B and C, broad form property damage and products, and completed operations. Such insurance must name the CITY as an additional insured.
 - iii) Employment Practices Liability: Employer's liability limits of at least \$500,000.00. Such insurance must name the CITY as an additional insured.
- d) The VFD agrees to maintain in continuous force and effect the following minimum levels of insurance for its VFD firefighters:
 - i) Workers' Compensation
 - 1. Coverage A - Statutory

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2. Coverage B - \$100,000.00

- e) The VFD agrees to maintain in continuous force and effect the following minimum levels of insurance regarding the rendering of emergency medical assistance: \$1,000,000.00 medical professional liability each occurrence/aggregate.
- f) The VFD will provide the FFD Chief with certificates of insurance evidencing continuous coverage during the term of this Contract at the levels of insurance described in the preceding portions of this Paragraph and requiring that thirty (30) days advance, written notice of cancellation be given to the FFD Chief by the insuring company.
- g) If the insurance described in paragraph 13 is canceled, the CITY may in its sole and absolute discretion terminate the Contract effective immediately upon written notice to the VFD.

14. REIMBURSEMENT. The VFD is solely responsible for the expenses and costs of operating, maintaining, repairing and replacing any equipment, materials, supplies or any other items used by the VFD or its VFD firefighters in performing any services required by or related to the Contract (with the exception of the Mobile Computer Terminals (MCT) issued and owned by FFD); provided that, if foam belonging to the VFD is reasonably required to extinguish a fire in the CITY, the CITY will, at the election of the FFD Chief, replace any foam actually used or reimburse the VFD for the replacements cost of such foam.



15. NON-DISCRIMINATION. The CONTRACTOR agrees to comply with the CITY's non-discrimination policy and agrees not to unlawfully discriminate by reason of age, race, religion, color, sex, national origin or disability while performing the services required herein.

16. MODIFICATIONS. In order to be binding upon the parties, any Contract which the FFD and VFD Chiefs are authorized to approve must be in writing and signed by the parties hereto. Such Contracts may be amended or terminated in the same manner and shall remain in effect until so amended or terminated or until the termination of the Contract; provided that this contract and any amendment thereto must take precedence over any Contract approved by the FFD and VFD Chiefs.

17. BREACH.

- a) Unless otherwise provided herein, this Contract shall remain in full force and effect for a period of one year. Each term and condition of this Contract is a material term and condition. In addition to any other remedy to which a party may be entitled, violation of any term and condition of this Contract will be a proper basis for termination of this Contract; except for the occurrences listed in Paragraph 17(c) herein, the party alleged to have violated this Contract must first be given written notice of the violation and an opportunity to cure said violation, except as set forth in Paragraph 17(c). For purposes of this paragraph, "an opportunity to cure" will mean a reasonable time of no more than ten (10) days (including holidays, Saturdays and Sundays). If any party fails to cure the



violation after notice and an opportunity to cure, the other party may, in its sole discretion, terminate this Contract by written notice signed by such party's Chief, or take such other and further action as to which such party may be entitled.

- b) Written notice of a violation must be given within thirty (30) days of the date such violation is alleged to have occurred. Each day that a violation continues is a separate violation, for purposes of this Contract. Written notice of a violation must contain the following information:

- i) Date(s) on which the violation occurred;
- ii) Description of the facts giving rise to the alleged violation;
- iii) Paragraph(s) of the Contract alleged to have been violated; and
- iv) The VFD shall have no more than ten (10) days to cure the violation.

- c) Without prior notice of a violation of subsection (a), the CITY may terminate this Contract by written notice upon the occurrence of any one or more of the following events:

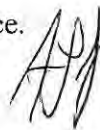
- i) The VFD fails to respond with the equipment or VFD firefighters required in this agreement, unless the VFD is unavailable within the meaning of Paragraph 12 herein; or
- ii) The VFD is unavailable within the meaning of Paragraph 12 and fails to give timely notice of such unavailability in the manner and as described by Paragraph 12; or

A handwritten signature in black ink, appearing to be 'APK' or similar, located below the list of events.

- iii) The VFD closes its operations at 7221 Stoney Point Road, Fayetteville, NC 28306, during the term of this Contract.
- d) The termination will be effective upon receipt by the persons described below:
 - i) For the VFD: any corporate officer of the VFD, the VFD Chief or Deputy/Assistant VFD Chief.
 - ii) For the CITY: CITY Manager, Assistant CITY Manager, FFD Chief or Deputy/Assistant Fire Chief of the FFD.
- e) Failure by any party to give notice of a violation or to terminate this Contract will not waive such party's rights to give notice of other violations or to terminate this Contract for any other violations.

18. NOTICES.

- a) Any written notice, except as provided in Paragraph 17 above, may be given by first class mail addressed as follows:
 - i) For the CITY: City of Fayetteville Fire Department
ATTN: Fire Chief
433 Hay Street
Fayetteville, NC 28301
 - ii) For the VFD: Stoney Point Volunteer Fire Department
ATTN: Fire Chief
7221 Stoney Point Road
Fayetteville, NC 28306
- b) Any change in the address contained in subsection a) above will be given to the other party immediately by written notice.



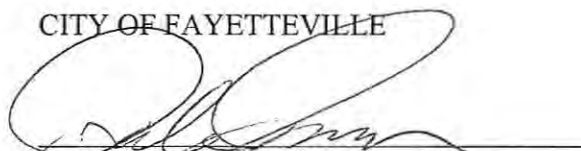
- c) Any change in the person serving as chief of either party will be given immediately by written notice to the other party by the party making such change.

19. RIGHT TO ENFORCE. This Contract does not create any rights enforceable by any person or entity not a party thereto, including, but not limited to, VFD firefighters and officers of the VFD and residents or property owners located within the CITY, including the VFD Service Areas.

20. ENTIRE AGREEMENT. This Contract constitutes the entire Contract between the parties. There are no oral or written Contracts or understandings which are binding upon the parties, except as expressly set forth herein. This Contract cannot be amended, altered or modified in any manner except by written Contract, duly authorized by the Council of the CITY and the Board of Directors of the VFD and duly executed by the appropriate corporate officers of the CITY and the VFD.

ATTEST:


JENNIFER PENFIELD, Deputy City Clerk

CITY OF FAYETTEVILLE
BY: 
DALE E. IMAN, City Manager



STATE OF NORTH CAROLINA

CONTRACT

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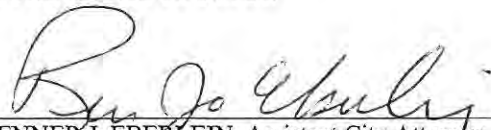
STONE POINT VOLUNTEER
FIRE DEPARTMENT, INC.

BY: 
Freddy Johnson, Sr., Chief

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

APPROVED AS TO FORM:

 11/7/11
LISA T. SMITH, Chief Financial Officer


RENNER J. EBERLEIN, Assistant City Attorney

* Amount not to exceed \$328,240.⁰⁰

[illegible]