

## TOWN OF ENFIELD FIRE CONTRACT

THIS AGREEMENT (the "Agreement") is deemed made and effective as of the 1st day of January, 2018, by and between the TOWN OF ENFIELD, as located in Tompkins County, New York (hereinafter, the "TOWN"), and the ENFIELD VOLUNTEER FIRE COMPANY, INC., a special not-for-profit corporation organized under the laws of the State of New York, of the Town of Enfield, Tompkins County, New York (hereinafter, the "FIRE COMPANY") (the TOWN and the FIRE COMPANY are sometimes referred to as the "Parties", and the use of the term "TOWN" shall include the boards, elected officials, appointed officials, employees, and agents of the TOWN, wherever the context so permits or allows).

### PREAMBLE AND AGREEMENT

WHEREAS, there has been duly established a fire protection district which includes the entire geographic territory of the Town of Enfield; and

WHEREAS, the FIRE COMPANY has proposed to provide fire protection, rescue, and first aid (collectively referred to herein as "Fire Protection Services") to the TOWN for the term and for the compensation set forth below; and

WHEREAS, following a public hearing duly held as provided for in Town Law §184, the TOWN is hereby duly authorized to contract with the FIRE COMPANY for fire protection services and emergency service in case of accidents, calamities or other emergencies in the Town of Enfield; and

NOW, THEREFORE, and in consideration of the mutual promises and covenants contained herein, the TOWN and the FIRE COMPANY hereby agree that the terms and conditions of this Agreement shall govern the agreement between the parties, and the parties thus and further agree as follows:

### SERVICES AND TERMS

1. The FIRE COMPANY shall promptly respond to calls for attendance at any fire, for any medical emergency, and for any life-threatening emergency event occurring in the Town of Enfield. "Respond" shall mean a verbal or other communicated response plus attendance thereat in person.
2. The FIRE COMPANY shall, when notified by any person or entity, including but not limited to the Tompkins County 911 Center, that there is a fire, medical emergency, or life threatening emergency occurring in the Town of Enfield: (i) respond and attend without delay, with suitable equipment, apparatuses, and personnel, including where required suitable fire pumping and hose apparatus with qualified and trained personnel; (ii) proceed with diligence to make every reasonable effort to extinguish said fire and prevent the loss of life and/or property in the case of fire, and to act and react appropriately to attempt to prevent the loss of life and further injury in the case of emergency.
3. The FIRE COMPANY shall keep and maintain in good repair and working order suitable and adequate fire-fighting apparatus, together with all other necessary fire-fighting tools, implements, equipment, and emergency service equipment to properly discharge its obligations pursuant to this Agreement.
4. The FIRE COMPANY agrees to supply the services of trained and equipped firefighters and emergency medical personnel, utilizing mutual aid when necessary. If ambulance services are provided the FIRE COMPANY will utilize only operators and providers with current Ambulance Service Certificates who are in compliance with Public Health Law Article 30. The FIRE COMPANY shall not be responsible for fire inspections in the Town of Enfield pursuant to this Agreement.

5. The TOWN acknowledges that the FIRE COMPANY is a member of the Tompkins County Mutual Aid network and that, in the event that fire-fighting apparatus and personnel of the FIRE COMPANY are committed or unable to respond, the FIRE COMPANY and the Tompkins County 911 Center shall arrange fire protection for the Town of Enfield.

6. The Parties agree that if the FIRE COMPANY shall willfully fail to respond to alarms or fulfill and perform its duties and obligations under this Agreement without a compelling cause and reasonable explanation at any time during the duration of this Agreement, or if at any time the FIRE COMPANY notifies the TOWN that it does not intend to perform its duties for any period of time, the TOWN may allot and pay to another fire company or qualified recipient (for furnishing fire protection and services to the TOWN) a prorated portion of any part of the monies due or to become due under this Agreement for the period for which such service is rendered. In the event that monies have already been paid to the FIRE COMPANY for the period involved, the FIRE COMPANY shall refund to the TOWN the full amount of unearned money on a pro-rata basis for each day of failure to provide service. The intent of this paragraph is not to prohibit the temporary coverage of other districts per the Mutual Aid network, which may happen from time-to-time.

7. The Parties agree that it is not their intention that this Agreement cover the costs and expenses incurred by the FIRE COMPANY in responding to spills or other emergencies involving hazardous materials, but rather that the FIRE COMPANY may be separately reimbursed by the TOWN for any such costs of responding to a hazardous materials emergency from money which the TOWN may be able to obtain from other sources, including but not limited to SEMA and FEMA. In the event of a hazardous materials incident, the TOWN agrees to attempt to collect any funds as may be reasonably available for or recoverable in relation to such incident, and to pay the same over to the FIRE COMPANY in reimbursement of the FIRE COMPANY's expenses, but only so long as permitted by the grant terms or by law, and not prohibited by the authority disbursing such funds. However, in the event that the TOWN is unsuccessful in collecting funds for such an incident, or is not permitted to pay over any money so received, the Parties agree to meet to reasonably determine what recompense is owed to the FIRE COMPANY for such services as provided. Provided, however, that nothing in this Agreement shall limit or restrict the FIRE COMPANY from seeking direct reimbursement for such expenses under Navigation Law § 181, or under other state or federal statutes and regulations or otherwise.

8. The TOWN agrees that it will obtain, keep and maintain a Volunteer Firefighter's Benefits Law insurance policy and coverage for all members of the FIRE COMPANY, at its expense, pursuant to VFBL § 30 for the duration of this Agreement. In addition, consistent with recent amendments to General Municipal Law § 205-CC providing certain cancer compensation coverage to certain defined "eligible volunteer firefighters," the TOWN agrees to procure and carry such coverage, or reimburse for the reasonable cost of the same, in accord with the requirements of such law.

9. The TOWN agrees that all money paid hereunder shall be a charge upon the fire protection district, shall be assessed and levied upon the taxable property in the Town of Enfield, and shall be subject to collection with annually levied Town taxes.

10. Upon election of a new member by the Fire Company, the Fire Company secretary shall notify the Town Clerk in writing of such election, for the Town Board's final approval, by resolution, such election pursuant to Not-for-Profit Corporation Law 1402(b)(3).

11. FIRE COMPANY is responsible for its own payroll, social security, employment, and income taxes, as applicable.

12. The TOWN agrees that it will provide one locked mailbox, as provided for other departments and offices of the Town of Enfield for the term of this Agreement.

13. The TOWN agrees to provide, through the Town Highway Department and at the discretion of the Highway Superintendent as time, personnel and resources permit, snowplowing for the FIRE COMPANY premises, particularly as to the apparatus aprons and parking areas, for the term of this Agreement.

14. At all times the Fire Company shall keep on file in the Town Clerk's Office a current and updated version of its Corporate By-laws, its Code of Ethics and its Procurement Policies. Should any such policies be amended, changes, or replaced during the calendar year, updated versions of documents shall be filed with the Town Clerk within 30 days of such amendment, change, or replacement. In addition, and as required by recent amendments to the NYS Labor Law, including but not limited to § 201-g and such statute's implementing regulations and guidance, the FIRE COMPANY shall supply to the TOWN a copy of its compliant sexual harassment policy on or before December 31, 2018, and will thereafter supply the Town with any updated policies when and as amended, together with confirmation that annual training and related requirements have been duly met in accord with the law and such policy.

### MEETINGS AND REPORTING

15. The Parties acknowledge that in performing the terms of this Agreement the FIRE COMPANY is performing an essential public function which is paid for largely by public funds. The Parties thus agree that it is in their mutual interest, and in the interest of the public to assist each other in maintaining the public trust.

16. The Parties agree to have two representatives from each of Town Board and the FIRE COMPANY to meet quarterly, on the last Tuesday of the months of March, June, September and December of each year under this Agreement to assist each other in maintaining the public trust and to discuss the provision of FIRE COMPANY services. Meetings shall take place alternatively at Town Hall and at the Fire Hall. The FIRE COMPANY also agrees that a member of its Board of Directors, to the extent available, will be present at all regularly scheduled monthly Town Board meetings. In addition, the FIRE COMPANY shall provide the following information at the following intervals:

A. Monthly:

- i. A written report as to the number and types of calls/responses made by the FIRE COMPANY for the prior calendar month.

B. Quarterly:

- i. Copies of required reporting for each call for the prior quarter, as is provided to the NYS Office of Fire Prevention and Control.
- ii. A record of staffing and training levels of each volunteer of the FIRE COMPANY, including a complete listing of all active members of the FIRE COMPANY.
- iii. A statement of income and expenses as they relate to the activities of the FIRE COMPANY for the prior quarter under this Agreement, including the FIRE COMPANY's Treasurer's reports labeled Quarterly Report, Spending Report (with actual expenditures to date), and Budget Report.

C. Annually:

- i. On or before February 1, annually, the FIRE COMPANY will provide the TOWN a *statement of* outstanding debts and inventory. A copy of the Report filed with the Tompkins County Clerk pursuant to Not-for-Profit Corporation Law § 1402(f) shall satisfy this requirement.

ii. Pursuant to Town Law § 184(1-a) and prior to commencing the negotiation process for a contract with the FIRE COMPANY, but in no event later than September 1<sup>st</sup> of the last year of this Agreement, the FIRE COMPANY shall file with the TOWN a statement itemizing the estimated costs of the incorporated FIRE COMPANY attributable to the provision of services under the prospective contract. The estimated costs attributable to the provision of services under the prospective contract itemized in the statement shall include, at a minimum, those, if any, for: supplies; materials; operation, maintenance and repair of equipment and apparatus; insurance; training; protective clothing, gear and other personnel costs; building rental, maintenance and operation; and a specified proportionate share of capital costs. Copies of the following shall be included with this information and any statements required in this subparagraph:

- a. The FIRE COMPANY'S most recent annual report of directors pursuant to Not-for-Profit Corporation Law § 519;
- b. The FIRE COMPANY'S most recent filed IRS Form 990; and
- c. The FIRE COMPANY'S most recent annual report pursuant to General Municipal Law § 30-a.

iii. On an annual basis on or before February 1 the FIRE COMPANY will provide the TOWN with a detailed breakdown of the FIRE COMPANY'S capital plans, along with statements setting forth capital reserves funding such capital plans. The capital plans will detail the useful life of the FIRE COMPANY'S real property, apparatus and major equipment (such as PPE and SCBA), anticipated capital repairs, maintenance or replacements needed, and the amount of reserve funds that have been established. Any singular item anticipated to be repaired, maintained or replaced at a total cost greater than \$25,000 should be included in the capital plan.

The provisions of this Paragraph 16 are not intended to provide the TOWN with any approval or other authority relative to the FIRE COMPANY'S use or utilization of money or equipment (other than the state-mandated budget system for appropriations and levies and other and related requirements of New York State law), but are intended to be informational to provide the parties the means with which to properly anticipate annual needs and expenses, as well as the terms and requirements needed in or for future services agreements.

17. The FIRE COMPANY shall, in accordance with General Municipal Law § 209-z, have its records audited annually by an independent certified public accountant or firm of certified public accountants, and within 180 days of the FIRE COMPANY'S fiscal term, it shall submit a copy of its audit report to the TOWN. In the event that the FIRE COMPANY does not submit the certified annual audit described above, the FIRE COMPANY shall submit to the Town the following items upon a monthly basis until such time as such audit is submitted:

- A. Monthly bank account statements for all FIRE COMPANY accounts;
- B. All revenues received; and
- C. All expenses disbursed.

18. The FIRE COMPANY agrees that it will abide by the laws, rules, regulations, and requirements: (i) of law, or of the TOWN, relating to hazardous materials and disasters; (ii) set forth by the County in the Tompkins County Multi-Jurisdictional All-Hazards Mitigation Plan (to which the TOWN is a signatory), or its equivalent, and including as now or periodically hereafter amended; and (iii) of SEMA and FEMA. Further, the FIRE COMPANY agrees to cooperate with the TOWN to: (i) coordinate emergency and disaster

communications; (ii) to apply for and manage disaster relief funds available directly or indirectly through FEMA or SEMA (or any similar or related agency); and (iii) to coordinate operations with FEMA and SEMA within the Town of Enfield and the County of Tompkins, including under NIMS requirements, programs, and protocols.

19. The Parties agree that sources of water are an important aspect of fire protection, and accordingly the Parties agree to carry on mutual discussions of appropriate ways to address water needs with respect to fire service during the duration of this Agreement.

20. The Parties agree, with the safety of its emergency responders and citizens as priority goals, that it is mutually beneficial to recognize and acknowledge the need for the FIRE COMPANY'S compliance with all applicable standards, including federal, state, and local statutes, rules and regulations, and voluntary consensus standards, and to reasonably fund such compliance, including the required annual independent audit (the costs thereof being already included in the money herein required to be paid to the FIRE COMPANY pursuant to this Agreement).

#### TERM OF ENGAGEMENT, COMPENSATION AND SURPLUS FUNDS

21. This Agreement shall run from the unexpired balance of 2018 through December 31, 2020. For each year under this Agreement, the TOWN agrees to pay the FIRE COMPANY the following amounts on the 1<sup>st</sup> day of March of each year as follows, provided, however that the first \$60,000 due in each contract year shall be paid by the TOWN on or before January 15<sup>th</sup> of each contract year:

<u>Contract Year</u>	<u>Amount Payable</u>
2018	\$ 313,817
2019	\$ 320,093
2020	\$ 326,495

All sums due and payable by TOWN for 2018 are acknowledged as having been paid in full. This Agreement is intended to: (i) duly extend the contract payment terms of the Extension and Modification Agreement through 2018; (ii) formally replace such Extension and Modification Agreement with a permanent contract; and (iii) provide for the contract payment amounts due for each of 2019 and 2020.

22. Despite any expiration or closing date stated herein, this Agreement will be terminated and replaced when the TOWN and the FIRE COMPANY reach an accord as to the terms of a new contract governing services and payments for future service years or periods, and the failure of the Parties to come to formal agreement or to timely make and complete any public interest determinations or public hearings shall not, standing alone, result in cessation or a termination of services, it being the express and stated intent of the Parties that this Agreement continue and this provision be construed, interpreted, and applied to ensure that at all times fire contract is in place and fire protection services are duly provided until terminated as required by Town Law § 184 and related provisions of law.

23. The Parties agree that should the FIRE COMPANY have any surplus funds, they will be placed in a reserve account or otherwise managed as required or permitted by law. The amount of surplus funds will be reported to the TOWN within 30 days of the end of each fiscal year. It is further agreed that these funds may be used at the FIRE COMPANY'S discretion to reduce the costs of capital projects or emergency repairs, if and as required or permitted by law.

## LIABILITY, INDEMNITY AND INSURANCE

24. The FIRE COMPANY is an independent contractor and solely responsible for its actions and decisions, its separate private funding and the use thereof, and the internal management of its equipment and personnel. The determinations or decisions as to whether and how to respond to any report of fire or other emergency is within the discretion of the FIRE COMPANY. Except as otherwise required by law or by any local law duly adopted addressing the operations and duties of the TOWN, the TOWN shall not be responsible to manage any affairs of the FIRE COMPANY.

25. The FIRE COMPANY agrees to procure, obtain, and maintain in full force and effect during the term of this Agreement sufficient insurance coverage for the fire-fighting and emergency apparatus and personnel to be used in discharging its duties herein, including but not limited to policies, terms, and endorsements providing general liability, property damage, contractual liability, and collision coverage(s) in accord with the following requirements: (i) all policies shall be based and written upon an all-hazards or broad form coverage forms (or equivalent); (ii) the amount of general liability coverage shall be at least 3,000,000 per event and per person; (iii) the amount of loss or damage coverage for property damages and losses shall be sufficient to replace any essential equipment or vehicles damaged or destroyed by any cause or event; (iv) motor vehicle coverages shall provide at least \$1,000,000.00 in coverage upon a per event and per person basis for all owned and non-owned vehicles; (v) the TOWN shall be named as an additional insured upon each such policy; and (vi) each and all policies shall include contractual liability coverages for the benefit of the TOWN, including as an additional insured." The TOWN shall be provided with a copy of all policies and declarations pages, copies of any renewal policies, and 30-days' notice of any material change in or termination of coverage.

## NON-DISCRIMINATION

26. During the term of this Agreement the FIRE COMPANY agrees that, in accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other local, state and federal statutory, regulatory, and constitutional non-discrimination provisions, the FIRE COMPANY will not discriminate against any volunteer or applicant because of race, color, sex, national origin, religion, creed, disability status, gender identity, gender expression, familial status, marital status, genetic predisposition, domestic violence victim status, sexual orientation, prior conviction/arrest status (except those pursuant to Article 6-c of the NYS Correction Law), military status, age, or any other local, state, or federally protected category.

## COMPLIANCE AND PARTIAL INVALIDITY

27. All other provisions of law required to be made a part of this Agreement are hereby deemed incorporated herein, and any Party learning of a required clause or term shall immediately notify the other Party, such clause shall be temporarily deemed a part hereof, and the Parties shall immediately commence to negotiate in good faith to add an addendum or to amend this Agreement to bring the same into compliance upon such terms as the Parties may then so agree. If any provision hereof is held invalid or unenforceable by a court or tribunal of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be reformed to the minimum extent required to bring it into compliance with applicable law, or to otherwise make such provision enforceable. Such reformation shall be performed by first taking into account the purposes sought by Parties in any such clause, and second, the intent of the Parties as gleaned from other provisions in this Agreement. If such reformation is not possible, then such provision shall be served from the Agreement.

**ASSIGNMENT, WAIVERS, AND GENERAL TERMS**

28. This Agreement may not be assigned by the FIRE COMPANY, nor may its right, title and interest herein be assigned, transferred, conveyed, sublet or disposed of without the prior consent, in writing, of the TOWN.

29. The failure by either or both Parties to strictly enforce the terms or provisions of this Agreement shall not constitute a waiver relative to enforcement or future enforcement of such terms or provisions, nor for the enforcement of any other terms or provisions of this Agreement.

30. This Agreement may be terminated upon a material breach which remains uncorrected thirty (30) days after receipt of written notice from one Party to the other Party sent by certified mail, return receipt requested.

31. This Agreement shall be deemed executory only to the extent of money available to the TOWN for the performance of the terms hereof. In accordance with the guidance of State Finance Law § 41, and like requirements of Town Law and the Local Finance Law, the TOWN shall have no liability to FIRE COMPANY or to any third party under this Agreement beyond the funds appropriated and made available for this Agreement.

32. The subject headings are for convenience only, and do not define, limit or amend the terms or clauses appearing thereunder.

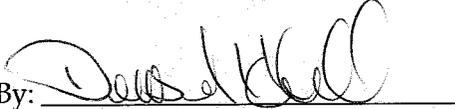
33. This Agreement constitutes the entire understanding of the Parties and revokes and supersedes all prior agreements between them and is intended as a final expression of their agreement. It shall not be modified or amended except by a writing that is signed by the Parties hereto which specifically refers to this Agreement. This Agreement shall take precedence over any other documents that may be in conflict herewith. The Parties shall not be bound by any agent's or employee's representation, promise, or inducement not set forth in this Agreement. No course of prior dealings between the Parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. Acceptance of or acquiescence in a course of performance rendered under this or any prior Agreement shall not be relevant or admissible to determine the meaning of this Agreement, even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representations, understanding or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

IN WITNESS WHEREOF, the TOWN and the FIRE COMPANY have duly executed and delivered this Agreement.

TOWN OF ENFIELD

ENFIELD VOLUNTEER FIRE COMPANY, INC.

By:   
Beth McGee, Town Supervisor

By:   
Dennis Hubbell, President

ATTEST:  
  
Town Clerk

ATTEST:  
  
Town Clerk

Dated: 12/12/18

Dated: 12/17/18