

**OPERATING AND SERVICES AGREEMENT FOR
FIRE PROTECTION SERVICES**

This Operating and Services Agreement ("Agreement") is made as of this 15th day of October 2012, (the "Effective Date") by and between the Town of Huntersville, North Carolina, a North Carolina Municipal Corporation (hereafter "Town") and Huntersville Fire Department, Inc., formerly Huntersville Volunteer Fire Department, Inc. (hereafter "Fire Department").

RECITALS

1. Town is a municipal corporation organized under the laws of the State of North Carolina, with authority to provide essential services, including fire protection services, to its citizens.
2. The Fire Department is a North Carolina non-profit corporation consisting of members and employees who provide fire protection and other emergency services.
3. Fire Department has been providing fire protection services to the Town and to areas outside of the Town limits. Town and Fire Department have previously entered into an operating and services Agreement, dated as of May 26, 1995, relating primarily to the use and occupancy by Fire Department of a fire station facility constructed by the Town and now designated as Huntersville Fire Station # 1. This Agreement will be in substitute of the 1995 Agreement.
4. By Articles of Merger filed with the North Carolina Secretary of State effective April 1, 2010, Gilead Volunteer Fire and Rescue Department (hereafter "Gilead"), which had been providing fire and emergency services to portions of Town and its extra-territorial areas, was merged into Huntersville Volunteer Fire Department, Inc., and the surviving non-profit corporation was renamed Huntersville Fire Department, Inc. The fire station owned and operated by Gilead continues to be owned by the surviving Fire Department, and is designated Huntersville Fire Station #2.
5. Town constructed a fire station facility on Eastfield Road to provide fire and emergency services for the eastern portions of Town and its extraterritorial areas, which station is operated by Fire Department. This station, which was constructed in part utilizing general obligation bond funds issued by Town, is designated Huntersville Fire Station #3.
6. It is contemplated that Town may construct future fire stations, both as additional stations or as a replacement for existing stations, particularly Huntersville Station #2.
7. Construction of Huntersville Station #1 was financed in part with certain tax-exempt funds borrowed from First Charter National Bank, but which obligation has now been satisfied. Construction of Huntersville Station #3 was financed in part with tax-exempt general obligation bonds issued by Town. Revenue procedures issued by the Internal Revenue Service, and specifically Revenue Procedure 93-19, dictate the procedures by which services or management contracts with non-governmental service

providers will not be treated as a private business use of a facility and hence cause the funding obligations to be a private activity bond which would deny the tax exempt status. It is the intent at all times that this Agreement be construed to comply with the provisions of that Revenue Procedure or any subsequent related revenue procedures.

8. Town has been providing substantial funding to Fire Department to provide services within the Town. Fire Department has also received direct funding from Mecklenburg County ("County") to assist in providing fire protection service to unincorporated areas within its fire district, in addition to such private funding that Fire Department has raised.

9. Beginning with the Fiscal Year 2012-2013, rather than making direct funding payments to the various fire departments serving unincorporated areas, County has established fire service districts and will levy a property tax within the unincorporated areas of those districts. The Huntersville district ("District") will be within the Town's extra-territorial or sphere of influence area.

10. By an Inter-local co-operation agreement dated as of July 1, 2012, (the "County Agreement") County and Town agreed that Town will provide fire protection and emergency services within the District, which it may do by contracting with Fire Department, and that the tax so levied in the District shall be payable to the Town for the sole purpose of providing fire and emergency services within the District. A copy of the County Agreement is attached as Exhibit A.

11. Town and Fire Department wish to enter into this Agreement for the purpose of providing the terms by which Fire Department shall provide fire protection and emergency services to the Town and to the District and the utilization and terms of the Town owned fire stations by the Fire Department.

AGREEMENT

1. **Agreement.** Pursuant to the terms of this Agreement and for the duration herein set forth, Fire Department will provide fire protection, rescue and emergency services as the primary provider to the Town, as it presently exist, or as the city limits may extend from time to time, and to the District (except such unincorporated areas of the District that may presently be served by other departments, so long as that other service continues).

2. **Term.** This Agreement shall be for a period of five (5) years, beginning on the Effective Date, without an option to renew on the part of either party; provided, further, that on the third anniversary of the Effective Date, Town shall have the option to cancel this Agreement, without penalty or cause, upon giving of one (1) year notice of the exercise of the option to cancel.

3. **Possession.** Throughout the term of this Agreement, except as otherwise provided herein, Fire Department shall be the user of the fire stations. Such right of use shall be deemed a contribution of the Town to the Fire Department as to any fire station owned by the Town, either presently or any future fire stations. At such time as this Agreement terminates and Fire Department is no longer the

provider of fire protection services to Town, Fire Department shall vacate the Town owned fire stations and return possession to Town.

4. Fire Department Standards. Throughout the term of this Agreement, Fire Department will remain a fully qualified, equipped and staffed fire department, meeting all state and local standards for volunteer fire department serving a suburban area. Without limiting the foregoing generality, Fire Department will meet all of the standards of performance required by the County Agreement, which standards are incorporated herein by reference.

5. Contribution. Annual contributions by Town to Fire Department during the term of this Agreement, in addition to that provided above, shall be determined from time to time by Town, consistent with its established policies of assisting the Fire Department in providing fire protection and related emergency services to the Town. By this Agreement, Town is not obligating itself or future Boards of Commissioners of Town as to the level of support given to Fire Department, except as to the right of use of fire stations as set forth herein or as otherwise provided in this Agreement.

6. Fire District Tax. The District property tax levied by the County and paid to the Town under the County Agreement shall be used by the Town only for provision of fire protection and related emergency services within the unincorporated areas of the District, including funding the Fire Department for the provision of those services. Such tax revenues shall be paid from time to time to Fire Department as determined in the Town's annual budget so long as this Agreement is in effect. The County Agreement provides that Town shall make recommendation to the County as to the fire tax rate for the District and shall request funding for providing such services. Fire Department shall consult with the Town to determine the cost to the Fire Department for providing such services to the District.

7. Cancellation. Notwithstanding the provisions of Paragraph 2 above, Town may at any time, upon giving of one (1) years notice to the Fire Department, cancel this Agreement and regain possession of the Town owned fire stations, if Town determines that Fire Department is unable or unwilling to provide the level of service required by this Agreement or the County Agreement or if Town shall decide to establish a fire department as a department of Town, staffed in whole or in part by full time fire fighters and fire chiefs who are employees of Town. If Fire Department reasonably determines that the level of additional support provided by Town is insufficient to maintain the services and standards of Fire Department as required by this Agreement, considering other sources of income, Fire Department may cancel this Agreement and cease fire protection services to Town upon giving Town one (1) year notice of its intent to cancel. In such event, Fire Department will deliver possession of the Town owned fire stations to Town.

8. Vehicles, Equipment. Upon termination or cancellation of this Agreement for any reason, Town shall have the right of first refusal, by giving notice prior to the termination date, to purchase any or all of the Fire Department's vehicles, equipment and supplies. The purchase price shall be the then fair market value of such vehicles, equipment and supplies (to be determined by independent appraisers if the parties cannot agree) reduced only by such amounts as are identified as having been contributed by

Town for the purchase of such, but which contributed credit is likewise reduced pro-rata to the reduction in value of such vehicles and equipment from original cost to the then fair market value.

9. **Dissolution of Fire Department.** Fire Department is a non-profit corporation whose charter provides that upon dissolution the assets must be distributed to a qualified tax exempt organization or to a federal, state or local government. Provided that Town is then providing fire protection services to the Town, and in recognition of the substantial funding provided by Town to Fire Department, Fire Department agrees that upon dissolution, Fire Department's remaining assets shall be distributed to Town to be used exclusively for fire protection and emergency services, unless otherwise prohibited by law.

10. **Agreement as to Use of Town Owned Station.** During the terms of this Agreement, or any mutually agreed upon renewals thereof, the following shall apply:

- a. Fire Department shall be the primary user of all Town owned fire stations and any use other than that of the Fire Department shall not unreasonably interfere with the Fire Department's use. This shall not, however, preclude Town designating portions of any of the fire stations for secondary Town usage, such as the establishment of a police office at Huntersville Station #3. The Town or Fire Department may jointly authorize other uses from time to time, on a temporary basis, by appropriate agencies or departments of Town or authorized entities, provided that such other usage shall be authorized only after giving adequate advance notice to the Fire Department to enable Fire Department to re-position its equipment or take other appropriate measures so the Fire Department's ability to respond to fires or other emergencies shall not be compromised. Any uses in any area of any fire station other than by Fire Department shall not unreasonably interfere with the operation of the Fire Department.
- b. Fire Department shall be responsible for keeping the premises in a clean and sanitary condition, except that when uses other than that by the Fire Department are authorized, the using entity shall be responsible for such cleaning and maintenance, to the reasonable satisfaction of Fire Department.
- c. Fire Department shall be responsible for repairs and maintenance with the areas used by it, including all electrical, plumbing, heating and air conditioning systems, interior walls, windows and doors, and the exterior truck bay doors, up to a maximum of \$5,000.00 per lease year on Town owned stations. Town shall be responsible for amounts in excess of \$5,000.00 per year and for major structural repairs to exterior walls, roofs, exterior doors (except truck bay doors) and windows, and similar major components on such Town owned stations, unless, in all cases, damage thereto is caused by Fire Department, its agents, employees, or members while on duty with the Fire Department, in which case Fire Department shall be responsible.
- d. Utilities, such as water, sewer, telephone, alarm monitoring, electric and gas, shall be the responsibility of Fire Department, except to the extent that usage is attributable to users other than Fire Department, and provided further that if said utility is on a Town owned system that does not allocate costs to specific sites (such as telephone at Stations 1 and 3), Town will pay such expense.

- g. Fire Department shall be responsible for keeping all of its equipment secured and for taking whatever steps are deemed appropriate to prevent damage, loss of theft to the equipment while on the premises. Fire Department does hereby hold Town harmless and does release and acquit Town for any loss or damage to Fire Department's vehicles and equipment, except for the intentional, wanton or willful acts on part of Town, its authorized employees or agents.
- f. Fire Department shall use the fire stations solely for the operation of a Fire Station, which term includes uses that are ancillary to the actual operation of a fire station, such as office facilities, training facilities, fund raising and similar uses. This provision shall not be interpreted as precluding other Town uses as set forth in 10(a) above. Any use by or authorized by the Fire Department which is not directly related to the operation of the fire station or of Fire Department's mission of providing fire protection must have the prior approval of Town, which may be given by Town Manager.
- e. Fire Department shall make no changes to the exterior appearance of any Town owned station or make interior modifications without express written consent of Town.

11. Independent Agency. Fire Department is a separate, independent corporation and is not an agency of the Town. Town shall have no control over the operation of the Fire Department, so long as Fire Department is providing the services and fulfilling the responsibilities set forth in this Agreement. Town shall not direct the operation, control or training of the members or employees of the Fire Department, approve or disapprove of the purchase of equipment (except as a result of a direct funding request), approve or disapprove of the membership or in other manner supervise any element of control over Fire Department. Fire Department does agree that it shall not discriminate in its membership or employment because of race, religion, color, sex, age, disability or national origin, provided, however, that members and employees must be competent and capable of performing the requirements of the job. Town, however, shall during the term of this agreement have the reasonable right of approval of the person to serve as Chief of the Fire Department, since such person also serves as spokesperson for Town's fire protection and emergency services, unless such right affects the status of any tax-free obligations as set forth in paragraph 16, in which case this right shall be deemed removed. Fire Department shall be responsible for maintaining all records and paying all wages and benefits of paid employees of Fire Department. Fire Department shall be solely responsible for determining that the work conditions comply with all health and safety regulations and shall be responsible for filing any necessary reports or documents relative thereto. Town assumes no responsibility for any violation of any Occupation, Health & Safety Act (OHSa) or any other similar State or Federal Act.

12. Insurance. Fire Department shall be responsible for obtaining and maintaining all appropriate and required insurance, specifically including the insurance requirements under the County Agreement. Such insurance may, if available to Fire Department, be maintained through Town by virtue of Town's membership in any type of inter-local risk management agreement. Fire Department will be responsible for all workers' compensation and other similar obligations. Fire Department will obtain special event insurance for those occasions, such as fund raising dinners, when Fire Department coverage does not cover liability at such events.

13. **Financial Statements.** Fire Department will, as a matter of information, provide Town with its annual financial statement, showing sources of all income, including contributions from Town and the nature of all such expenditures. This statement shall be provided within thirty (30) days after completion. Town shall not have any right of approval or disapproval of the statement; however, Town shall have the right to reasonably require an independent audit paid for by Fire Department and submitted to Town within 30 days of completion. Without limitation, it shall be reasonable to require such audit if one is required of the Town by the County under the County Agreement, or if the annual financial statement raises reasons for further audit. Any misuse of funds shall be a cause for terminating this Agreement. Fire Department agrees that it shall begin preparation of the financial statement within thirty (30) days after June 30th of each year and assure its timely completion and submission to Town.

14. **Equipment.** All vehicles and equipment of the Fire Department shall be titled in the name of the Fire Department during the term of this Agreement and shall not be titled in the name of the Town, even though contribution or payments from Town may have been used to acquire or finance the acquisition of such equipment.

15. **Mutually Agreed Upon Renewal.** As set forth in Paragraph 2 of this Agreement, this Agreement shall be for a maximum of five (5) years and there is no option to renew this Agreement. Nevertheless, if neither party gives notice to the other at least sixty (60) days prior to the final termination date of this Agreement, such non-action shall be deemed a mutually agreed upon renewal of this Agreement for an additional five (5) year period on the same terms and conditions as are herein set forth, and specifically including the right of Town to terminate the Agreement, without cause, on a date which is three (3) years from date of the beginning of such renewal. Notice of the intent of either party to complete the termination at the end of such term shall be given in writing at least sixty (60) days prior to that time. A mutually agreed upon renewal shall be deemed to occur at the end of each subsequent five (5) year period, unless notice is given by either party. At no time, however, shall this extension be deemed to abrogate the rights herein given by either party to earlier terminate the Agreement for any of the reasons set forth.

16. **Tax Free Status.** It is the intent that the Agreement at all times complies with provision of any Revenue Ruling or Proceeding in order to maintain a tax free status of the funds used to finance the construction of any Town owned fire station, or any replacement to that financing. If any condition exists or arises which may cause this Agreement to be in violation thereof and is not promptly corrected, then this Agreement may be deemed void and the rights between the parties cease. Fire Department specifically agrees that there shall be no overlapping Board members in numbers precluded by Revenue Procedure 93-19 or successor procedure, nor any prohibited overlapping on the Board of either party or Chief Executive Officers of either party.

IN WITNESS WHEREOF, Town and Fire Department have executed this Agreement after approval of its respective governing bodies, as of the Effective Date.

TOWN OF HUNTERSVILLE, North Carolina
A North Carolina Municipal Corporation

By: 
Greg Ferguson, Town Manager

ATTEST:


Janet Pierson, Town Clerk

APPROVED AS TO FORM:


Robert B. Blythe, Town Attorney

HUNTERSVILLE FIRE DEPARTMENT, INC.
A North Carolina Non-Profit Corporation

By: 
Chief, Huntersville Fire Department, Inc.

By: 
Secretary, Huntersville Fire Department, Inc.