

RESOLUTION NO. 18- 04

A RESOLUTION OF THE COMMERCE CITY COUNCIL APPROVING A FIRE PROTECTION AGREEMENT BETWEEN THE CITY OF COMMERCE AND HUNT COUNTY, TEXAS, GRANTING AUTHORITY TO THE MAYOR OR HIS DESIGNEE TO EXECUTE THE AGREEMENT AND ALL OTHER RELATED DOCUMENTS TO EFFECT THE AGREEMENT FOR FIRE PROTECTION, A COPY OF WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT "A"; PROVIDING FOR THE INCORPORATION OF PREMISES; PROVIDING APPROVAL OF THE AGREEMENT: PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, A regular meeting of the City Council of the City of Commerce, Texas, was held in Commerce, Texas, at City Hall, on the 20th day of March 2018, at 6:00 p.m. with a majority of City Council members being present and constituting a quorum to consider this Resolution; and

WHEREAS, the County of Hunt, State of Texas, desires to enter into a fire protection service agreement with the City of Commerce, and in connection therewith has submitted an agreement to the City of Commerce for its consideration, a copy of which is attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, the City is authorized under Chapter 791 of the Texas Government Code to enter into agreements with other governmental entities for the provision of governmental services; and

WHEREAS, all funds expended by the City to fulfill its obligations under the Agreement set forth in Exhibit "A" shall be paid from current revenues legally available to the City; and

WHEREAS, after careful consideration and deliberation of the terms of the Agreement, the City Council of the City of Commerce, has determined that the approval of the Agreement is a legitimate governmental function and is deemed to be in the best interest and general health, safety and welfare of the City of Commerce; and

WHEREAS, the agreement marked Exhibit "A" attached hereto and made a part hereof, between the County of Hunt, State of Texas, and the City of Commerce for fire fighting service, be approved and accepted and is hereby approved and accepted in all respects.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE TEXAS:

Section 1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Approval of Agreement. The Fire Protection Agreement Contract between the City of Commerce and Hunt County, Texas, attached hereto and incorporated herein as Exhibit "A" is hereby approved, and the Mayor or his designee is hereby authorized to execute the Agreement and any and all related documents necessary to effect the Agreement.

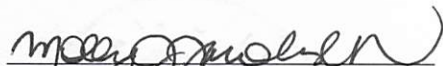
Section 3. Severability. If any section, article, paragraph, sentence, clause, phrase or word in this Resolution or the attached Agreement is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Resolution and/or the Agreement, and the City Council hereby declares it would have passed this Resolution approving the remaining portions of this Resolution and of the Agreement despite such invalidity, which remaining portions shall remain in full force and effect.

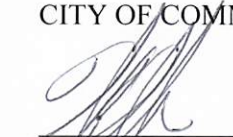
Section 4. Effective Date. This Resolution shall become effective upon its passage, and the Agreement, Exhibit "A" shall become effective upon execution by the parties.

PASSED AND APPROVED BY THE Commerce City Council at a regular meeting of the City Council of the City of Commerce, Texas, on the 20th day of March 2018.

ATTEST:

CITY OF COMMERCE, TEXAS


Molly Jacobsen, City Secretary


Wyman Williams, Mayor

(seal)

APPROVED AS TO FORM:

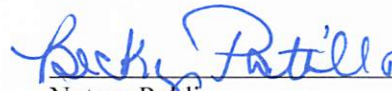

Patricia Adams, City Attorney

I, Molly Jacobsen, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of a resolution, and that the same has not been repealed and is in full force and effect.

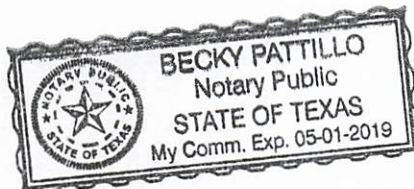

Molly Jacobsen
City Secretary
City of Commerce, Texas

(seal)

Sworn to and subscribed before me, on this the 21st day of March, 2018, to certify which witness my hand and seal of office.


Notary Public
State of Texas

(seal)



FIRE PROTECTION AGREEMENT CONTRACT

THE STATE OF TEXAS §

COUNTY OF HUNT §

ARTICLE I

This agreement ("Agreement"), made and entered into on the day and date last hereinafter written, by and between Hunt County, Texas, hereinafter called "County", acting herein by and through its duly elected qualified County Judge and County Clerk, having been heretofore authorized so to act under and by virtue of the provisions of a resolution duly adopted by the Commissioners Court of said County and the City of Commerce/Commerce Fire Department

FIRE DEPARTMENT

City of Commerce/ Commerce Fire Department is an incorporated volunteer fire department, or municipal fire department located in Hunt County, at the address of 1103 Sycamore Street, Commerce, TX 75428

hereinafter called "Department" acting through its Fire Chief as authorized by said department. Said agreement made pursuant to authority of: Texas Local Government Code Chapters 352 and 791; Texas Government Code Chapter 418 Subchapters E and E-I; and Texas Civil Practice and Remedies Code Section 78.001, as applicable.

WITNESSETH

WHEREAS, the Department is the owner of certain fire fighting vehicles and other equipment designed for and capable of being used to fight, control and extinguish fires; and

WHEREAS, the County is desirous of obtaining certain firefighting services rendered by said department, as more fully hereinafter described and limited,

NOW, THEREFORE, for and in Consideration of the premises and mutual benefits to be derived by each of the parties hereto, which said parties now Agree to be valuable and sufficient Consideration, said parties Agree and upon the terms and conditions as follows:

ARTICLE II

DEFINITIONS

As used herein, the words and phrases hereinafter set forth shall have the meanings as follows:

- A. "Emergency" shall be any circumstance in which there is a high probability of death or serious injury to an individual or significant property loss, located in any area of Hunt County.

- B. "District" means the area within the boundaries of Hunt County, Texas, for which the Department located in such district, has permanent responsibility for first alarm response to fires in such district.
- C. "HCFA" means The Hunt County Firefighters Association, which is a Corporation made up of the Fire Departments in Hunt County that receive funding from the County.
- D. "Urban area" means any area within the corporate limits of an incorporated city, town, or village within said County.
- E. "Department" means a firefighting group that is either a government entity or non-profit entity located in Hunt County.

ARTICLE III

SCOPE AND NATURE OF SERVICES

- A. Service to be rendered and performed hereunder by the Department are limited to Fire Protection Services normally rendered under circumstances of emergency as hereinafter defined.
- B. It is hereby understood and agreed by and between the parties that the County is divided into Districts as shown by map of Hunt County dated (10-26-15) on file and available for review in the office of the Hunt County Fire Marshal and Hunt County 911 Office, for the purpose of establishing primary responsibility for Fire Protection throughout the County. The HCFA will be responsible for dictation, formation and alterations of District boundaries, with final approval being made by Commissioners' Court or their designee.
- C. Each department in Hunt County is responsible for making first alarm response to fire or other emergencies within their District. No Department shall respond out of its District unless Mutual and/or Automatic Aid are requested by another department. Local Government Code, Section 418.109.
- D. Such service shall be rendered on first response basis to the District provided, however, when one or more fires are in progress within the County, or when the strength of the firefighting personnel of the Department has been substantially or materially weakened by the absence of the members thereof in the suppression and fighting of fire, or when any such equipment or personnel has been ordered into action or to remain on a standby basis because of actual or threatened disaster or calamity, and when any such condition or emergency shall exist, it shall be the responsibility of the Fire Chief of said Department or some other member thereof designated by him/her for such purpose, to determine

whether or not such firefighting equipment shall be dispatched, and the judgment of such person in such matter shall be final.

- E. County agrees that Department shall render such services to other Districts in the County if Mutual Aid and/or Automatic Aid is requested by the Department of such District. Department shall have Authority to render Mutual Aid Assistance as provided by Section 418.109 and Section 418.110 of the Local Government Code.
- F. County gives and grants to the Department full and complete authority to operate the Department's vehicles on and over the roads, highways and other thoroughfares of the County and other public places that are subject to the County's maintenance and control. Vehicles must be compliant with State of Texas safety and insurance requirements. Also, drivers of fire vehicles must meet requirements of the State of Texas:

CDL Exemptions

Individuals who operate any of the following vehicles are not required to obtain a CDL but must have the correct class of driver license for the vehicle they are operating. Individuals must also certify to the Texas Class A or B Driver License Application - Non-CDL Exempt Vehicles (CDL-2). See CDL-Exempt Vehicle Test Sites.

1. Military or commercial vehicles when operated for military purposes by military personnel,
 2. A vehicle controlled and operated by a farmer, used to transport agricultural products, machinery or supplies within 150 miles of the individual's farm,
 3. Fire-fighting or emergency vehicles necessary to the preservation of life or property or the execution of emergency governmental functions whether operated by an employee of a political subdivision or by a volunteer fire fighter, and
 4. Recreational vehicles driven for personal use (although a CDL is not required, individuals must obtain the proper license class for the vehicle weight), and
 5. A vehicle used exclusively to transport seed cotton modules or cotton burs.
- G. Department agrees that a Firefighter providing service to the County under this Agreement may be considered an Agent of the County as provided by Section 352.004 of the Local Government Code, if all other conditions precedent for that agency relationship are met when engaged in the scope of its duty to provide fire protection services for the residents in any part of the area of the County that lies outside the territorial limits of any municipal corporation. However, it is understood that the Department is a private non-profit corporation and not a governmental entity, and is not an agent of the County for any other purpose.

- H. It is expressly agreed and understood that the Department assumes all responsibility for any injury or damage suffered by any person or property resulting from the provision of any emergency service not the subject of this contract or the use of any member's personal vehicle in response to any dispatch including any damage or injury caused or contributed to by reason of the use or operation of any equipment or tangible property owned by the County or purchased by the County for the Department including attorney fees, costs of court, and other expenses reasonably necessary in preparing and presenting any defense in such matter as well as for any damage for which the County is found liable by any court of competent jurisdiction.**
- I. The County's authority shall be limited to that authority provided by Chapter 352 of the Texas Local Government Code or other applicable law. Under that authority and in order to protect the best interest of the residents of the County, each member of the Department shall be subject to a criminal background check and drug screening at the Department's expense upon joining the Department, or within three months after full execution of this Agreement if no criminal background check or drug screening occurred upon the member's joining. An additional drug screening shall occur after any collision or other accident involving a Department vehicle or a member's personal vehicle while responding to a dispatched emergency call. If any criminal background information or positive drug screen is obtained during these tests and/or background checks, the information shall be forwarded within five (5) business days to the attention of the Hunt County Fire Marshal. If the Fire Marshal or the Department believes the information obtained warrants removal of the member from the Department, the member shall be removed from the Department, or the Department will no longer receive payments from Hunt County under this Agreement. In addition, if it is discovered that the Department intentionally or knowingly failed to perform its duties under this paragraph, it shall repay the monies obtained from the County during the entire period of non-compliance.**
- J. Department agrees that if it is known or becomes known that an active member has:(1) ever been convicted of or received deferred adjudication for ARSON, MURDER, KIDNAPPING, SEXUAL OFFENSES (as defined by required registration as a Sexual Offender), SELLING OF DRUGS, CRIMES OF MORAL TURPITUDE or DOMESTIC / FAMILY VIOLENCE or (2) been convicted of any FELONY, including deferred adjudication, within the past 5 years, such information will be made known to the County through the Hunt County Fire Marshal and said member will be removed from that department. Department agrees that time shall be calculated from the last date of confinement, parole or probation in determining the age of the offense.**
- K. The Hunt County Fire Marshal shall be responsible only for the performance of the contract and not responsible for day to day operations of the contracted departments.**

- L. The HCFA shall monitor Department performance to include equipment, personnel, training, apparatus and response, and if determines there is a deficiency, to report such to the Hunt County Fire Marshal.
- M. All fire/arson investigations (except those within the City Limits of Greenville and Commerce) will be conducted and coordinated by the Hunt County Fire Marshal's Office, and no Department shall initiate, conduct, or request outside investigation assistance unless first approved by the Hunt County Fire Marshal.

ARTICLE IV

TERM

The term during which this agreement shall be in force and effect shall commence on the _____ day of _____, and end at such time when a new contract supersedes the current contract.

ARTICLE V

COMPENSATION

- A. ~~It is understood that County will enter into appropriate contractual relationship with other Cities/Departments within the said County, relating to the rendition of Fire Protection Services to areas within the said County, and as more fully herein provided, County will make certain payments to the City/Department rendering said services.~~
- B. As consideration for services rendered by the Department there under, Hunt County shall make the following payments unless unforeseen budget restrictions prevent payments:
 - a. Hunt County will provide \$2,400.00 per month for such Fire Protection and Emergency Services.
 - b. Hunt County will provide an amount not to exceed \$2,500.00 per month to be divided by departments for run overage of dispatched fire calls. This report will be provided to the County by the HCFA.
- C. The payments from Hunt County shall only be used for fire department operations.
- D. The County will provide Workman's Compensation Insurance coverage to all Volunteer Firefighters while they are in the performance of their duties of firefighter for their respective department. Any person having filed a claim for Workman's Comp. shall not perform any duties with said fire department, until written release from a Medical Doctor is submitted to Hunt County and the said fire department. Such release MUST include a

specific notation that the firefighter is released for heavy physical activities such as those normally encountered in active fire control.

- E. The payments from Hunt County listed in Article V. B. above shall be reviewed annually during the budget process, and shall not be made unless approved by the Commissioners during a regularly scheduled session or special session. If the County budget is depleted due to an unforeseen disaster or act of God, the County shall not be under obligation to pay the scheduled amount.

ARTICLE VI

BOOKS, RECORDS, AND EQUIPMENT

- A. The Department shall keep accurate books and records as to all firefighting or other emergency calls made. Such records shall reflect the date, time and the location of where the service was rendered, and the name and exact address if available. At any point the County may request a copy of call record. The Department must provide the requested record within five (5) business days.
- B. Monthly reports shall be submitted to the Texas Fire Incident Reporting System, the Texas Forest Service, and the National Fire Incident Reporting System.
- C. Monthly call reports shall be submitted to the HCFA at the following monthly meeting.
- D. A quarterly report shall be given by the HCFA to the County Commissioners Court that shall include the call volume and number of AMR dispatches, including the number of AMR dispatches that were not responded to, for each department. The quarterly report shall be broken down by Department and call type.
- E. The Department shall keep accurate books and records of all monies spent from County contract funds.
- F. The Department shall keep and maintain a list of active members.
- G. The Department is encouraged to have a member attend each of the HCFA meetings to conduct business, report any concerns, ideas, comments, and to keep the Fire Protection in the County moving forward. No Department's receipt of the monies provided for in Section V.B, above, shall be contingent upon attendance of such meeting.
- H. Contract payments shall be distributed from Hunt County to the Department monthly. Payments to Departments whose reports and records are not received by the deadline may be withheld by decision of the County Judge.

- I. The Department shall maintain its firefighting apparatus, personal protection equipment, communications equipment, and other equipment such that it is in good working order at all times. Hunt County Fire Marshal's office, which may include HCFA upon the Fire Marshal's request, shall be entitled to inspect said apparatus and equipment at any reasonable time
- J. The Department shall maintain sufficient liability insurance (with a minimum of \$300,000) for all vehicles used in furnishing fire protection in Hunt County. Written verification of insurance will be furnished to Hunt County if requested and kept on file at all times.
- K. The books and records mentioned in the Agreement, including a list of active members, shall be open to inspection with ten days written notice by a person designated by the Hunt County Commissioners Court. Nothing in this section shall limit the application of the Texas Public Information Act.
- L. The Hunt County Fire Marshal's office may perform periodic inspections of Department's Equipment and facilities and conduct financial audits.

ARTICLE VII

ENTIRE AGREEMENT

No representation or promise shall be binding upon parties hereto except those representations and promises contained herein, or in some future writing signed by the party making such representation or promises,

ARTICLE VIII

SEVERABILITY

If any section of this Agreement should be deemed void for any reason, such action shall affect only that particular section, and will not adversely affect the validity of the Agreement

ARTICLE IX

NOTICE

Notice to the Department provided for herein shall be sufficient if sent by certified mail, postage prepaid, return receipt requested, addressed to the following:

(VOLUNTEER FIRE DEPARTMENT)

(Legal mailing address)

And notice to County provided for herein shall be sufficient if sent by certified mail, postage prepaid, return receipt requested, addressed separately to each of the following:

HUNT COUNTY, TEXAS
ATTN: COUNTY JUDGE
ATTN: HUNT COUNTY FIRE MARSHAL
COUNTY COURTHOUSE
P.O. BOX 1097
GREENVILLE, TEXAS 75403-1097

EXECUTED this the 20th day of March, 2018 .HUNT COUNTY, TEXAS

By: _____
JOHN HORN, HUNT COUNTY JUDGE

ATTEST:

By: _____
JENNIFER LINDENZWEIG, HUNT COUNTY CLERK

Fire Department City of Commerce/ Commerce Fire Department

By Chris Bass _____
Chief or Authorized Official

By [Signature] _____
Mayor

Date: _____