

**AGREEMENT FOR FIRE FIGHTING AND FIRE PROTECTION SERVICES WITH A
VOLUNTEER FIRE DEPARTMENT**

STATE OF TEXAS

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FISCAL YEAR 2024 TO 2025

COUNTY OF ATASCOSA

WHEREAS, ATASCOSA COUNTY, TEXAS, hereinafter “COUNTY,” is a political subdivision of the State of Texas, has the authority under Texas Local Government Code, Section 352.001 to contract with an incorporated volunteer fire department that is located within the COUNTY to provide firefighting and fire protection services to an area of the COUNTY that is located outside the corporate limits of any city, town or village; and

WHEREAS, the BLACKHILL VOLUNTEER FIRE DEPARTMENT, hereinafter “VFD,” is an incorporated volunteer fire department located within COUNTY; and

WHEREAS, COUNTY and VFD represent that each is independently authorized to perform the functions contemplated by this Agreement; and

WHEREAS, COUNTY is contracting with an not-for-profit tax-exempt entity to provide a public service, because VFD has fire protection vehicles and other equipment designed for the extinguishing of fire, the providing of emergency services, and the prevention of damage to property and injury to persons from fire and other emergencies and has the control and use of volunteer members who are trained to properly utilize such vehicles and equipment and to provide fire protection and emergency services; and

WHEREAS, this agreement and contract is made between COUNTY and VFD pursuant to the authority of Subchapter A of Chapter 352 of the Texas Local Government Code and pursuant to the general authority of the Commissioners Court to contract with providers for services for the public.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in consideration of the above recitals, mutual benefits, and promises each to the other made herein, the Parties named above do hereby agree as follows:

I. DEFINITIONS

“Fire Fighting and Fire Protection Services” shall mean and include, but not be limited to, assisting in service initiatives, programs and strategies to reduce fire calls, rescuing life involved in fire incidents, controlling and extinguishing fires, driving, maneuvering, and redeploying fire service vehicles, mitigating damage to the environment and to property, maintaining firefighting and

emergency capabilities and equipment in a state of readiness, and maintaining an active roster of at least eight (8) firemen.

II. PUBLIC PURPOSE

(A) The purpose of this agreement is to provide public firefighting and fire protection services and other limited related emergency response services within the area of COUNTY that lies outside the boundaries of any municipal government. COUNTY has no authority to provide fire protection or most other emergency response services within the territorial limits of incorporated municipalities and by this agreement does not attempt to usurp the authority of municipalities to manage, regulate, and provide firefighting and fire protection services within municipal boundaries.

(B) It is agreed by COUNTY and VFD that the terms of this agreement shall only be applicable to fire fighting and fire protection services provided by VFD within the "Designated BLACKHILL VFD Area" shown on the "First Call for Response Area" shown by the official Fire Protection Zone Map on file with the minutes of the Atascosa County Commissioners Court in Jourdanton, Texas, and a photocopy of which is attached hereto as Exhibit "A" and incorporated herein and made a part hereof.

III. VFD OBLIGATIONS

VFD, as a part of this agreement, and as a condition precedent of the payment by COUNTY of any and all sums called for under this agreement, agrees that:

(A) VFD will provide firefighting and fire protection services for all persons and property within the "Designated BLACKHILL VFD Area" shown on the "First Call for Response Area" shown by the official Fire Protection Zone Map on file with the minutes of the Atascosa County Commissioners Court in Jourdanton, Texas, and a photocopy of which is attached to this Agreement as Exhibit "A" and incorporated herein and made a part hereof. Further, VFD agrees that it shall be the First Responder for firefighting and fire protection services within the "Designated BLACKHILL VFD Area."

(1) Upon receipt of emergency information invoking the services provided by this agreement, a first call response shall be made by VFD. A first call response by VFD shall be completed in accordance with the terms of this agreement.

(2) If VFD is unable to respond, COUNTY dispatch shall be **IMMEDIATELY** notified by VFD of its inability to provide firefighting and fire protection services and a broadcast will be made by COUNTY for general response. Complete failure of communication or dispatch contact will be treated as an inability to respond by VFD, and COUNTY will then default and broadcast to general response.

(B) VFD expressly agrees to save, indemnify, and hold harmless COUNTY, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, including reasonable attorney's fees, for injury to or death to any person, or for damages to any property, arising out of or in connection with the services provided under this agreement.

(C) Emergency services, other than those concerning firefighting and fire protection services in the "Designated BLACKHILL VFD Area" shown on the "First Call for Response Area" shown by the official Fire Protection Zone Map, are not subject to this agreement. In the event VFD provides services not provided for by this agreement, IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT VFD ASSUMES ALL RESPONSIBILITY FOR ANY INJURY OR DAMAGE SUFFERED BY ANY PERSON OR PROPERTY RESULTING FROM SUCH ACTION, INCLUDING ANY DAMAGE OR INJURY CAUSED OR CONTRIBUTED TO OR BY REASON OF THE USE OR OPERATION OF ANY EQUIPMENT OR TANGIBLE PROPERTY OWNED BY THE COUNTY OR PURCHASED BY THE COUNTY FOR VFD, AND VFD AGREES TO INDEMNIFY THE COUNTY FOR ANY AMOUNT SPENT BY THE COUNTY IN DEFENDING ITSELF IN ANY COURT ACTION ARISING OUT OF A SITUATION IN WHICH VFD UTILIZED SUCH EQUIPMENT TO PROVIDE NON-FIRE RELATED EMERGENCY RESPONSE SERVICES OR WHICH OTHERWISE ARISES FROM THE PROVIDING OF NON-FIRE EMERGENCY RESPONSE SERVICES, INCLUDING ATTORNEY'S FEES, COSTS OF COURT, AND OTHER EXPENSES REASONABLY NECESSARY IN PREPARING AND/OR PRESENTING ANY DEFENSE IN SUCH MATTER AS WELL AS FOR ANY DAMAGES FOR WHICH THE COUNTY IS HELD RESPONSIBLE BY ANY COURT OF COMPETENT JURISDICTION. It is further expressly understood and agreed that no official, employee or agent of COUNTY has authority to bind COUNTY to be liable for the manner and means of providing firefighting and fire protection services.

(D) VFD shall use reasonable diligence and effort to provide the firefighting and fire protection services and related emergency response services it has contracted to provide by this agreement and to provide immediate, direct, and competent supervision of VFD members, employees, agents, contractors, sub-contractors, laborers, and/or volunteers, if any, in the furtherance of the purposes, terms, and conditions of this agreement. The Parties do not hereby waive any immunity, defense, privilege, or remedy provided by law.

(1) VFD agrees to provide firefighting and fire protection services with such personnel and equipment that is determined by VFD to be adequate and appropriate to successfully and timely complete said services and VFD shall be responsible for determining the techniques utilized to complete said services.

(2) VFD, at its sole expense, shall maintain an active training schedule for all fire personnel within the department. In regards to the training requirements, at a minimum, thirty percent (30%) of the VFD membership shall have completed at least, twenty (20) hours of training by the first day of the last month of this agreement. All training shall be in accordance with the Texas State Fireman and Fire Marshal's Association (SFFMA) curriculum or the

Texas Commission on Fire Protection Standards (TCFP) or the authority having jurisdiction (AHJ).

(3) All training hours required herein will be certified to the County Fire Marshal no later than the fifteenth (15th) day of the last month of this agreement.

(4) All training shall be conducted by

(a) Local Training. A fire department training coordinator selected from within VFD and in accordance with a scheduled lesson plan. Local training must be documented with a roster signed by all attendees. This documentation must include the class subject materials, the number of hours of training being completed. These documents shall be turned in to the County Fire Marshal no later than the fifteenth (15th) day of the last month of this agreement. *The county will accept hours for training conducted by a non-certified trainer, such as the Fire Chief or a VFD training officer as long as the Fire Chief provides clear documentation of the training, its description and its length. The Fire Chief must attest to the documentation submitted to the county. The county will accept hours from fire training webinars if the criteria meets the requirements of this contract. Webinar hours must be attested to by the Fire Chief.*

(b) Commercial Training. A training provided by an organization recognized by the Texas Fireman's and Fire Marshal's Association providing commercial training sessions documented by certification issued by the training organization. These documents shall be turned in to the County Fire Marshal no later than the fifteenth (15th) day of the last month of this agreement.

(5) Failure to complete the required training and/or submit the required documentation in a timely manner shall be considered good cause for default and termination of the agreement and shall result in forfeiture of the funds consideration.

(E) VFD agrees to cause its members, employees, agents, contractors, sub-contractors, laborers, volunteers and/or personnel providing firefighting and fire protection services the subject of this agreement, when performing such services, to conduct themselves in a professional manner and to comply with applicable federal, state, county and city laws, regulations and/or ordinances. All firemen, volunteer or otherwise, of VFD must be members of VFD and properly trained and equipped to perform firefighting and fire protection duties. Radio communications will be conducted in accord with any rules, procedures or directives of the Sheriff of Atascosa County and/or County Fire Marshal. VFD further agrees that it will cooperate with the County Fire Marshal to the extent provided for by Texas law.

(F) VFD, in carrying out the terms of this agreement, will in good faith and where possible, attempt not to utilize any person under 18 years of age in the performance of the services to be provided under this agreement.

(G) It is agreed that VFD shall comply with any rules, procedures, or directives of the County Fire Marshal for determining which fires warrant investigations, and shall cooperate with any such investigation made by the appropriate County Fire Marshal, State Fire Marshal, County Sheriff and/or other law enforcement agencies or their designees.

(H) The books and records maintained for operating VFD shall be open to inspection by COUNTY or its designated representatives by a scheduled appointment with the VFD Treasurer and President but shall not exceed more than ten (10) days from initial request date. The request will be made via email and the time frame will begin one day after the email has been sent.

(I) VFD shall submit semiannual (July/January) financial reports, including but not limited to copies of invoices, receipts, deposit slips, checks, and/or checkbook registers, to COUNTY no later than the first Friday of the corresponding month.

(1) VFD agrees to maintain a separate account for the funds paid under this agreement and shall furnish to COUNTY a financial statement and itemized expense report concerning receipts and payments from said account, not later than the first Friday of July and January months. All reports and statements shall have sufficient information to establish compliance with the terms of this agreement and to qualify each expense paid by VFD. Department ledgers (copies) as well as official bank statements will be required as part of the financial report's paperwork to be submitted.

(J) VFD agrees to submit, not later than the first Friday of the first month of the following New Year, a final run report listing the total number of runs made for each month of the agreement year. All department fire runs will be divided by County calls, City calls, and all mutual aid calls where the VFD responded to assist another agency. A full log of all calls run for the year will be furnished to the County. Concurrently, VFD agrees to provide the Fire Marshal with a list of training that each of the members of the department received. All documents shall be provided to the County Fire Marshal and shall be signed and certified by an approved officer/coordinator of VFD.

(K) COUNTY recommends VFD to maintain statutory workers' compensation coverage for its employees, officers, and volunteers regarding VFD's performance under this agreement. VFD recognizes that COUNTY has no responsibility to furnish this coverage and **VFD waives any right to pursue COUNTY for potential liability regarding payments for this coverage or for potential liability regarding payments for claims filed against this coverage.**

(L) VFD agrees to all terms and conditions of the Atascosa County Emergency Management Plan, a copy of which is available for review at the Office of Emergency Management, and which is made a part hereof by reference, currently in effect at the time of signing this agreement and specifically agrees to participate in the plan under emergency conditions and meet all requirements with regard to fire fighting and emergency control as set forth in the Atascosa County Emergency Management Plan.

(M) VFD agrees to be subject to random audits by the Atascosa County Auditor's Office to ensure that funds paid by COUNTY are expended for firefighting and fire protection purposes.

(N) VFD agrees and warrants that, as a condition precedent for the distribution of any funds as consideration, VFD will become an incorporated not-for-profit tax-exempt organization as defined by state and federal laws and regulations within ninety (90) days of the Effective Date of this agreement. Thereafter, VFD will, at all times, maintain its state and federal not-for-profit tax-exempt status, and VFD will, at all times, comply with all state and federal regulations, laws, and provisions governing not-for-profit tax-exempt organizations. It is hereby agreed and understood by the Parties that should VFD fail to become an incorporated not-for-profit tax-exempt organization within the ninety (90) day period, this agreement, and the obligations contained herein, shall be null and void in its entirety.

IV. COUNTY OBLIGATIONS

In addition to any emergency communication systems that may be available to or in the possession of VFD, COUNTY will provide emergency communications and dispatch services for receiving and the dispatch of calls for emergency personnel.

V. CONSIDERATION

(A) For the services provided herein, COUNTY shall provide to VFD a total sum not to exceed \$18,000.00 during the term of this agreement. All sums to be paid under this agreement by the COUNTY shall be made from current revenues available. All sums paid under this agreement by the COUNTY shall be used by VFD to directly fulfill and benefit its ability to perform firefighting and fire protection services.

(B) The Parties agree that \$6,000.00 will be paid to VFD within thirty (30) days of the Effective Date of this agreement.

(C) The Parties agree that the second disbursement of \$6,000.00 will be paid to VFD upon written proof of completion of the training requirements in Section III (D), above.

(D) The Parties agree that in addition to the payments set forth in Section 5 (B) and (C) above, a disbursement in the amount of \$6,000.00 will be payable upon written proof to the County that the VFD has obtained an Accidental Death and Dismemberment (AD&D) policy, to be maintained for the duration of this agreement or longer. VFD is not relieved of any liability or other obligations assumed pursuant to this agreement by reason of its failure to obtain or maintain insurance in the sufficient amounts, duration, or types. Should VFD fail to provide written proof of an AD&D policy, under no circumstances shall the VFD be entitled to the amount stipulated in this Section 5(D). Should VFD let such policy lapse during the term of this agreement, the sum provided for under the Section 5 (D) shall be forfeited by the VFD and shall be returned to the County.

(E) It is expressly agreed by the Parties that the COUNTY has allocated the maximum of \$18,000.00 specifically for the full discharge of VFD's obligations under this agreement and it is agreed that COUNTY is in no way obligated to pay VFD any more than the maximum allocated.

VI. MISAPPROPRIATION OF FUNDS

During the term of this agreement and thereafter, VFD shall not make any use of any sums paid by COUNTY, except for the benefit and advancement of VFD's firefighting and fire protection services as required in the course of the performance of its services under this agreement.

VII. DEFAULT

(A) In the event either Party shall fail to keep, observe or perform any provision of this agreement, the breaching Party shall be deemed in default. If such default shall not be corrected within thirty (30) days after written notice thereof given by the non-breaching Party to the other, then the non-breaching Party shall be entitled to terminate this agreement immediately. (B) The failure by one Party to require performance of any provision shall not affect that Party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

VIII. EFFECTIVE DATE

(A) The effective date of this agreement shall be the 1st day of January 2023, or the date that both Parties have signed within the 2023 - 2024 fiscal year, whichever is later, and this agreement shall expire at midnight of the 31st day of December 2023.

(B) The COUNTY is expressly prohibited by the Constitution of the State of Texas from creating a debt without providing for a tax to pay the debt. Any provision that would provide for automatic renewal of this agreement would necessarily establish a debt. Consequently, there shall be no automatic renewal of this agreement. It is agreed that renewal of a fire fighting and fire protection services agreement between COUNTY and VFD, must be by execution of a new agreement for each fiscal year intended to be covered by the agreement.

IX. TERMINATION

(A) By Mutual Agreement. This agreement may be terminated by mutual agreement of VFD and COUNTY, as evidenced by a written termination agreement.

(B) For Misappropriation of funds. If VFD misappropriates funds paid to it under this agreement, the COUNTY may summarily and immediately terminate this agreement and all remaining sums either paid to VFD, but not expended or due to be paid to VFD shall be forfeited by VFD and shall be returned to COUNTY or retained by COUNTY.

(C) The County reserves the right to terminate this Agreement and/or withhold a portion of the payment if it is determined by the County that the fire department employees, volunteers, or agents are not performing their duties and obligations in a safe manner.

(D) By either party. This agreement may be terminated at any time for convenience or fault upon thirty (30) days written notice to the other party.

X. GENERAL PROVISIONS

(A) Agent for Limited Purposes Only. COUNTY and VFD understand and agree that Section 352.004 of the Texas Local Government Code applies to the services performed by VFD for COUNTY under this agreement and that when engaged in the scope of its duty to provide firefighting and fire protection services for the residents in any part of the "Designated VFD Area" shown on the "First Call for Response Area" shown by the official Fire Protection Zone Map, **VFD acts as an agent of the COUNTY only to the limited extent mandated by law. However, it is understood and agreed by COUNTY and VFD that VFD is a private not-for-profit corporation and not a governmental entity, and VFD is not intended to be an agent and is not an agent of County for any purpose.**

(1) VFD is an independent contractor and shall have the sole discretion to determine the skill certification level of firemen based on its right to supervise, manage, control, and direct the performance of its members, employees, agents, contractors, sub-contractors, laborers, and/or volunteers and the performance of the firefighting and fire protection services.

(2) Nothing contained within this agreement shall be deemed or construed by the Parties hereto or any other third party to create the relationship of principal and agent, partnership, joint venture, or of any other association whatsoever between the Parties, **it being expressly understood and agreed that no provision contained in this agreement nor any acts of the Parties hereto shall be deemed to create any other relationship between the Parties other than the relationship of independent contractor.**

(3) COUNTY looks to VFD for results only.

(B) Severability. If any term, covenant, or condition of this agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this agreement or the application of such remaining terms, covenants or conditions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this agreement shall be valid and shall be enforced to the fullest extent permitted by law and intended by the Parties. If any provision of this Agreement shall be held by the final judgment of a court of competent jurisdiction or the final award of an arbitrator to be invalid, void or otherwise unenforceable, such provision shall be enforced to the maximum extent possible to effect the intent of the parties, or, to the extent incapable of such enforcement, shall be deemed to be deleted from this Agreement, and the remainder of this Agreement shall remain in full force and effect. In such event the parties agree

to negotiate in good faith to amend and replace such invalid or void or unenforceable provision with a valid and lawful and enforceable provision which most closely approximates the intent and economic effect of such invalid or void or unenforceable provision.

(C) Notices. Any notice permitted or required to be given must be in writing and may be given by certified United States Mail, return receipt requested, addressed to:

To COUNTY: County Judge
Weldon Cude
#1 Courthouse Circle Drive, Suite #101
Jourdanton, Texas 78026

To VFD: Blackhill Volunteer Fire Department
Fire Chief

Any notice permitted or required to be given hereunder shall be deemed to have been given upon deposit of the notice in the United States Mail as aforesaid.

(D) Authority to Contract. The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions extending said authority have been duly passed and are now in full force and effect.

(E) Governing Law. This agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas and the venue for enforcement shall be Atascosa County.

(F) Anti-Contra Proferentem Clause. The Parties and/or their respective legal counsel have actively negotiated and drafted the provisions of this Agreement. Notwithstanding any rule to the contrary, no provision of this Agreement shall be interpreted or construed against any party because such Party and/or its legal counsel was the drafter thereof. In the event of a dispute between the parties as to the meaning of terms, phrases or specific provisions of this Agreement, the authorship of this Agreement shall not be cause for this Agreement to be construed against any party nor in favor of any party.

(G) Limitation of Liability. By entering into this agreement, neither Party waives sovereign immunity defenses nor any other limitation or defense of liability provided by law or in equity. No provision of this agreement is intended to modify or waive any provision of the Texas Tort Claims Act or any other statute.

(H) Interpretation. Throughout this Agreement, except where the context requires otherwise, the masculine usage of a term shall be construed to include the feminine, and vice versa, and the singular number shall be deemed to include the plural, and vice versa.

(I) Entire Agreement. This agreement constitutes the total and complete integration of any and all understandings existing between the Parties hereto and supersedes any prior oral or written agreements, promises or representations between them.

(J) Captions and Headings. The headings or captions of the various paragraphs of this agreement are for convenience only, and shall not define, interpret, affect or prescribe the meaning and interpretation of the provisions of this agreement.

(K) Current Revenues Available and No Tax Revenue. County agrees that any payments that are made under this Agreement for services will be made from current revenues available to County. Tax revenue may not be pledged to the payment of amounts agreed to be paid under this Agreement.

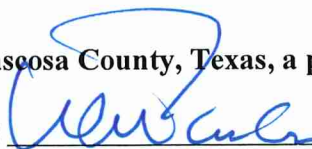
(L) No Third Party Beneficiaries. Nothing in this Agreement shall entitle any third party to any claim, cause of action, remedy, or right of any kind; it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

(M) Amendment. If the Parties desire to amend this agreement during or after the initial term, any modifications may be either incorporated herein by a written amendment or set forth in an entirely new agreement. Any modifications must be approved and signed by authorized representatives of the Parties.

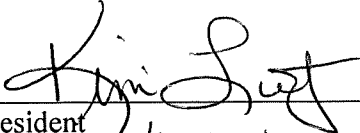
(N) Waiver. The failure of the County to insist on a strict performance of any of the terms or conditions of this Agreement shall be deemed a waiver of the rights or remedies that the County may have regarding that specific instance only, and shall not be deemed a waiver of any subsequent breach or default in any terms or conditions.

(O) Assignment. This agreement shall extend to and be binding upon the Parties and their respective successors and assignees, provided, however, that this agreement may not be assigned without the prior written consent of both Parties.


Dated to be effective this the 11 day of December, 2023

Atascosa County, Texas, a political subdivision of the State of Texas:
By:  Date: 12/11/23
Weldon Cude, County Judge

Blackhill Volunteer Fire Department, a not-for-profit corporation:

By: 
President
Printed Name: Kim Lutz

Date: 12/4/2023

By: 
Fire Chief
Printed Name: MARK LUTZ

Date: 12/4/2023

**By law, the County Attorney's Office may only advise or approve agreements or legal documents on behalf of its clients. It may not advise or approve an agreement or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should NOT rely on this approval, and should seek review and approval by their own respective attorney(s).*