

## **FIRE PROTECTION CONTRACT**

This Agreement is made by and between the City of McLendon-Chisholm, Texas, A Texas Municipal Corporation hereinafter referred to as the “City,” and the McLendon-Chisholm Volunteer Fire Department, a Texas non-profit corporation, hereinafter referred to as the “Department”, each referred to as a “Party” and collectively referred to as the “Parties”.

### **1. PURPOSE**

The purpose of this Agreement is to obtain fire protection services, including but not limited to arson investigation, fire prevention and fire fighting services, emergency medical services, and other related services within the City limits. In the interest of safety and protection of the public within the City limits this Agreement shall also extend to any fire or fire hazard that may threaten property within the City. The Department shall provide all equipment, personnel and other material as may be necessary or appropriate to provide the service. The City may, at its option, convey, lend or provide equipment materials or assistance to the Department, as the City may deem appropriate. However, this shall be under such terms and conditions as the City may impose and shall not in any way alter the Department’s obligations to provide full fire protection and emergency medical services hereunder.

### **2. CONSIDERATION**

In consideration for such services, the City shall pay to the Department a service fee in the sum of \$329,550 on or before January 1, 2018.

### **3. DURATION**

The Department shall provide the services described herein from the effective date through December 31, 2018. The effective date shall be the date of execution of this Agreement or such other date as the Parties may agree. Either Party may terminate this Agreement upon thirty (30) days’ written notice.

### **4. INSURANCE AND INDEMNIFICATION**

A. The Department agrees to save, indemnify, and hold harmless the City, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits and liability of 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.

B. The Department will keep and maintain such insurance policies as may be necessary to cover all obligations assumed under the indemnification provisions of this contract, insuring liability for injury or death of third parties, extended to include personal injury liability coverage, and for damage to property of third parties, with the following limits for each occurrence:

Injury or Death:	\$1,000,000
Property Damage:	\$1,000,000

The Department shall have the City added as an additional insured to the foregoing insurance policies and shall, on request, provide certificates of insurance to the City.

C. The Department waives subrogation rights for loss or damages to the extent they are covered by insurance. Insurers shall have no right of recovery or subrogation against the City, it being the intention that the insurance policies shall protect all Parties to the contract and be the primary coverage for all losses covered by the policies. The insurance companies shall have no recourse against the City for payment of premiums or assessments for deductibles. The failure of the City to approve, disapprove or act regarding insurance supplied by the Department shall not relieve the Department of full responsibility or liability for damage.

## **5. INDEPENDENT CONTRACTOR STATUS**

It is understood and agreed by the Parties that the Department is providing services to City as an independent contractor with the right to supervise, manage, control and direct the performance of fire protection, emergency medical, and other related emergency services. The City shall look to the Department for results only and the City shall have no right at any time to direct or supervise the Department operations or its employees, agents or volunteers in the performance of such services or as to manner, means, or method in which the services and organizational operations are performed. The Department is not and shall not be construed to be a division or agency of the City. The City does not and will not accept or assume any liability or obligation incurred by or on behalf of the Department. At no time will any employee of the Department be considered an agent or employee of the City.

## **6. STAFFING AND RESPONSE TIMES**

Subsequent to receiving the funding for Fire Department Protection, as set forth in line item 60502 of the City of McLendon-Chisholm Approved Budget for FY 2017-2018, the Department will man Station 1 with two personnel Monday through Sunday from 7:00 a.m. until 7:00 p.m.

The Department will strive to have a response time not to exceed 9.5 minutes from the time of page-out to on-scene time for all calls where the response originates from Station 1 by the on-duty personnel. In the event that the Department's personnel are responding from another location or responding after clearing from another call, then the Parties understand and agree that a 9.5 minute response time may not be safe or feasible and accordingly, the response time may be greater. When possible, the Department's volunteers will supplement the response of calls and/or stand by at Station 1 for additional calls.

In the event of a discrepancy, the Department shall be the sole authority with regard to call times and statistics and all its findings and decisions shall be conclusive and binding upon all Parties.

**7. AUDIT**

The Department shall provide an annual financial audit of its financial affairs for the period of this Contract, which audit shall be prepared in accordance with generally accepted accounting principles consistently applied. The audit shall be performed by an auditing firm of the Department's choosing. The results of the audit shall be public information.

**8. MISCELLANEOUS**

A. By entering into this Agreement, neither Party waives any immunity or defense that would otherwise be available to it against any claims, including those arising in the exercise of governmental powers and functions, all of which are expressly reserved.

B. This Agreement may not be assigned without the written consent of both Parties.

C. It is the intent and agreement of the Parties to this Agreement that all legal provisions of law required to be inserted herein, shall be and are inserted herein. If through mistake or oversight, however, any such provision is not herein inserted or is not inserted in proper form, then upon application of either Party, the Agreement shall be amended so as to strictly comply with the law and without prejudice to the rights of either party hereunder.

D. During the performance of this contract, the Department agrees that it shall not unlawfully discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

E. The titles and headings contained in the contract documents and the subject organization are used only to facilitate reference, and in no way define or limit the scope or intent of any of the provisions of this Agreement.

F. All notices, certificates or other communications hereunder shall be sufficiently given or shall be deemed given when delivered by regular mail, personal delivery or, in the case of notice of breach of contract, by certified mail, return receipt requested, addressed as follows:

If to the City:

City of McLendon-Chisholm:  
1371 W. FM 550  
McLendon-Chisholm, Texas 75032  
c/o Robert Steinhagen, Mayor

With copy by same delivery method to:

David Paschall, City Attorney

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If to the Department:

McLendon-Chisholm Volunteer Fire Department  
1250 S. Hwy 205  
McLendon-Chisholm, Texas 75032  
c/o Robert Jones, Fire Chief

With copy by same delivery method to:

Margaret O'Connor, Attorney for Department  
1509 Summer Lee Drive  
Rockwall, Texas 75032

The Parties may by notice hereunder designate any further or different address to which subsequent notice, certificates or other communications shall be sent.

G. In the event any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

H. This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one in the same instrument.

I. The validity, interpretation, and performance of this Contract shall be governed by the laws of the State of Texas. This Contract is fully performable and enforceable in Rockwall County, Texas wherein venue hereunder shall lie.

**IN WITNESS WHEREOF**, the Parties hereto have set their hands on the \_\_\_\_\_ day of \_\_\_\_\_ 2017.

CITY OF McLENDON-CHISHOLM, TEXAS

APPROVED:

By: \_\_\_\_\_  
Robert Steinhagen, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Palomba, City Secretary

McLENDON-CHISHOLM VOLUNTEER  
FIRE DEPARTMENT:

By: \_\_\_\_\_  
Robert Jones, Fire Chief