STATE OF TEXAS  
COUNTY OF ROCKWALL 

AGREEMENT FOR FIRE PROTECTION SERVICES AND INTEGRATION  

THIS AGREEMENT is made between the City of McLendon-Chisholm, Texas ("City"), a Type-A general law municipality in the State of Texas, County of Rockwall, and the McLendon-Chisholm Volunteer Fire Department ("MCVFD"), a Texas non-profit corporation, to be effective on the date that the last party signs the Agreement (the “Effective Date”) and for the purposes described herein.

WITNESSETH:

WHEREAS, the City is authorized to undertake actions for the protection of the public health, safety and welfare of the citizens of the City including providing for fire protection services; and

WHEREAS, the MCVFD is a combination paid/volunteer fire department organized and operated for the purpose of providing fire protection services for the protection of persons and property from, and in the suppression and fighting of, fires in Rockwall County, Texas; and

WHEREAS, the provision of Fire Functions, defined below, is a governmental function that serves the public health and welfare, promotes efficiency and effectiveness of local governments, and is of mutual concern to the contracting parties; and

WHEREAS, MCVFD and City agree that integration of the MCVFD and the recently formed McLendon-Chisholm Fire Rescue Department ("MCFR") is in the best interests of the citizens of the City and Fire District 22, defined below; and

WHEREAS, MCVFD is authorized by the State of Texas to perform Fire Functions and the City is authorized to provide Fire Functions and the parties desire to enter into this Agreement regarding the performance of Fire Functions; and

WHEREAS, City and MCVFD have determined it necessary and appropriate to enter into this Agreement for the integration of MCVFD into MCFR and the provision of Fire Protection Services, as defined below.

NOW, THEREFORE, MCVFD and City, for and in consideration of the recitals set forth above and terms and conditions below, agree as follows:

Section 1. Recitals. The recitals set forth above are true and correct and incorporated herein.

Section 2. Definitions. The following words shall have the following meanings when used in this Agreement:
2.1 "Fire-fighting Activities", "Fire Protection Services", or "Fire Functions" shall mean any and all of the customary and usual activities of a fire department, including fire suppression, fire prevention, training, safety education, maintenance, communications, rescue and emergency medical services, photography, and administration.

2.2 "Fire District 22" shall mean the geographic area depicted on Exhibit 1 hereto, as amended by the authorized governmental entity.

Section 3. Term

This Agreement is effective on the date of signature and expires upon completion of the integration provided herein or at midnight on September 30, 2019, whichever occurs first.

Section 4. Fire Protection Services; Personnel

4.1. The parties agree that MCFR will provide Fire Protection Services within Fire District 22, including the City.

4.2. MCFR will respond to Rockwall County Sheriff 911 dispatch direction.

4.3. MCFR will honor and perform all existing Interlocal and Inter-Jurisdictional Agreements of the parties for mutual aid and response that were signed prior to the Effective Date.

4.4. MCVFD agrees to cooperate with MCFR in performing the foregoing obligations by, among other things:

a. encouraging MCVFD personnel to apply for firefighter positions with the City and MCFR; and

b. granting MCFR full and complete authority to operate and utilize all MCVFD buildings, land, apparatus and equipment including, but not limited to the following:

   i. 2014 Ferrara Commercial Pumper;

   ii. 2017 Ford 550 Brush Truck;

   iii. 1995 Pierce Saber Pumper;

   iv. 2009 Chevrolet 3500 Brush Truck;

   v. Hoses;

   vi. Nozzles;

   vii. Air Packs;

   viii. Air Bottles;

   ix. Cascade System;
x. Rescue Tools;

xi. Hand Tools;

xii. Stations 1 and 2 and the real estate with them located at 1250 S SH 205, McLendon-Chisholm, TX and 10685 S FM 548, Royse City, TX;

xiii. Ladders; and

xiv. Administrative Equipment.

4.5 The City shall hire 6 full-time equivalent positions as employees of the City to be funded as provided by the Staffing for Adequate Fire and Emergency Repose (SAFER) Grant Award. All payment obligations and hiring requirements herein are subject to SAFER requirements, all Federal State and local hiring laws. Full-time Firefighters hired shall receive pay and benefits based on position and hours worked including but not limited to salary or hourly wages, insurance, workers compensation benefits, retirement benefits and any other benefit provided to other City employees that work similar hours.

4.6 The City shall be responsible for all individual equipment utilized by each firefighter, regardless of employment status. The ownership of individual equipment personally used by MCVFD firefighters hired by MCFR shall be transferred to the City upon such firefighter’s employment, at which time the City assumes all responsibility for serviceability, repair and/or replacement of all such equipment.

Section 5. Budget and Payments

5.1 On the effective date of this Agreement, MCFR shall be the primary provider of Fire Protection Services to Fire District 22 and the MCVFD will support MCFR operations as directed by the MCFR Fire Chief. Both entities shall cooperate to ensure fire and emergency services are provided to Fire District 22. MCVFD is solely responsible for any expense incurred by MCVFD that is not directly related to MCFR’s day to day operations. The invoices shall be submitted and processed pursuant to City policies.

5.2 The City shall be responsible for maintaining, including paying all related costs, and insuring the MCVFD assets identified herein utilized by MCFR.

5.3 All parties shall cooperate to facilitate the integration. Each party is responsible for their legal fees.

Section 6. Integration

6.1 City and MCVFD agree and commit to engage in good faith efforts to fully integrate MCVFD, including all of its assets, into the City and MCFR beginning October 1, 2018, as provided herein. Beginning October 1, 2018, the parties, and as necessary their
attorneys, shall confer and agree on the most efficient means for accomplishing all transfers along with processing, executing and filing all documents necessary, as provided herein. To achieve this purpose and the objectives and goals provided herein, the parties agree as follows:

6.1.1 Within 45 days of the effective date of this Agreement, the MCVFD and MCVFR Fire Chiefs shall present to the City Council a written report that, at a minimum, includes the following information as of September 30, 2018 and any changes through the date of the report:

a. an inventory of all assets of MCVFD;

b. the value of all assets of MCVFD;

c. the location where the assets of MCVFD kept;

d. the identity (including address, telephone number and email address) of any person or entity having any interest in any MCVFD asset;

e. a listing, with detailed explanation, of all existing liabilities of MCVFD and liabilities to accrue prior to September 30, 2019 of MCVFD; and

f. a plan for transfer of assets of MCVFD to the City, means for the proposed transfers and actions that must occur to complete such transfers.

6.2. Before September 30, 2019, MCVFD will transfer all MCVFD assets to City. This is inclusive of each and every asset of MCVFD, excepting and excluding only the real property and improvements known as MCVFD Station 2, and not limited to the assets identified above for use by MCFR. The parties agree to cooperate and aggressively pursue completion of the transfer of MCVFD assets to the City at the earliest time that due diligence permits, but in no event later than September 29, 2019.

In pursuance of the foregoing, the parties identify the following goals and objectives for completing the transfer of assets by MCVFD to MCFR:

6.2.1 Transfer of (a) all individual firefighter equipment, including uniforms and firefighter protective apparel, individually issued tools, equipment and apparatus, excluding apparatus acquired by MCVFD, in whole or in part, with grant resources by November 30, 2018; and (b) all real property and improvements, excluding Station 2, by November 30, 2018 in order to allow remodeling of Station One;

6.2.2 Transfer of any and all remaining assets, including apparatus, tools and equipment by June 15, 2019.

6.2.3 The liabilities, if any, of MCVFD existing as of September 30, 2018 shall remain the liabilities of MCVFD and shall not be assumed by the City.
6.2.4 The MCFR Fire Chief shall have the authority to adjust the time lines required for transfer of any individual piece of equipment or asset if unusual and unforeseen conditions arise that were previously unknown to or are beyond the control of either party to this agreement.

6.2.5 Any sums paid to MCVFD by Rockwall County to provide fire protection services for any part of the fiscal year 2018-2019 in the unincorporated areas of Rockwall County shall be transferred to the City within five (5) business days after complete execution of this Agreement or receipt of such funds by MCVFD, whichever occurs later. The City shall use any such money to fulfill MCFR’s obligations undertaken in section 4.3 above.

6.3. MCVFD will review and modify as necessary the MCVFD Articles of Incorporation to ensure proper and legal transfer of assets to City.

6.4 During the term of this Agreement, MCVFD, including but not limited to the MCVFD Fire Chief, shall engage with the MCFR Fire Chief for the purpose of transferring knowledge of all manner of MCVFD’s operations to the MCFR Fire Chief.

Section 7. Insurance and Indemnification

7.1. To the extent allowed by law, City will indemnify, hold harmless, release and defend MCVFD from and against all third-party claims of liability and resulting damages, including claims for property damage or bodily injury, that directly or indirectly arise from performance of this Agreement by MCVFD, its agents, employees and subcontractors.

7.2. City will keep and maintain such insurance policies as may be necessary to cover all obligations assumed under this Insurance and Indemnification provision of this Agreement, 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:

<table>
<thead>
<tr>
<th>Injury or Death:</th>
<th>$1,000,000</th>
</tr>
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<tbody>
<tr>
<td>Property Damage:</td>
<td>$1,000,000</td>
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City shall have MCVFD added as an additional insured to the foregoing insurance policies and shall, on request, provide certificates of insurance to the MCVFD.

7.3. To the extent allowed, City 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 MCVFD for the claims covered by this section, it being the intention that the insurance policies shall protect all parties to this Agreement and be the primary coverage for all losses covered by the policies. The insurance companies shall have no recourse against the MCVFD for payment of premiums or assessments for deductibles.

Section 8. Immunity
8.1 The fact that City and MCVFD accept certain responsibilities relating to the rendering of Fire Protection Services under this Agreement as part of their responsibility for providing protection for the public health makes it imperative that the performance of these vital services be recognized as a governmental function and that the doctrine of governmental immunity shall be, and it is hereby, invoked to the extent possible under the law. Neither City nor MCVFD waives any immunity or defense that would otherwise be available to it against claims arising from the exercise of governmental powers and functions.

8.2 It is expressly understood and agreed that by executing this Agreement, neither party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to it, against claims arising in the exercise of governmental powers and functions. By its execution of this Agreement, the City does not waive or surrender any of its governmental powers, immunities, or rights except as follows:

(a) The City waives its governmental immunity from suit as to any action brought by a party to this Agreement to pursue the remedies available under this Agreement, but only to the extent necessary to pursue such remedies. Nothing in this Section 8 shall waive any claims, defenses, or immunities that the City has with respect to suits against the City by persons or entities other than a party to this Agreement nor shall this Section 8 or Agreement be construed to waive any immunities, whether governmental, sovereign, legislative, official, qualified or otherwise, except as clearly set forth in this section.

(b) Nothing in this Agreement is intended to delegate or impair the performance by the City of its governmental functions.

Section 9 Other Agreements.

9.1. During the term of this Agreement:

9.1.1. MCVFD shall remain an independent Texas non-profit corporation and Internal Revenue Code 501(c)(4) tax exempt organization;

9.1.2. MCVFD shall operate under its Corporate Charter, 2017 Bylaws and governing Federal, State and Local laws; and

9.1.3. MCVFD shall not at any time, without the prior written consent of the City, collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber, any of its rights, title or interest in any asset claimed by MCVFD.

9.2. MCVFD and MCFR shall take mutually agreed upon action necessary to repurpose MCVFD as an auxiliary organization in support of firefighters and any civilian support organization serving Fire District 22 effective upon termination of this Agreement.
Section 10  Default and Remedies

10.1 This Agreement may not be terminated without the written agreement of both parties.

10.2 If a party to this Agreement is in default, the aggrieved party may, at its option and without prejudice to any other right or remedy under this Agreement, seek any relief available at law or in equity, including, but not limited to, an action under the Uniform Declaratory Judgment Act, specific performance and injunctive relief. Notwithstanding the foregoing, however, no default under this Agreement shall entitle the aggrieved party to seek or recover monetary damages of any kind.

Section 11  Entire Agreement

This Agreement represents the entire and integrated agreement between City and MCVFD and supersedes all prior negotiations, representations, and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

Section 12  Venue

The laws of the State of Texas shall govern this Agreement and each of its terms and provisions, including but not limited to the rights and duties of the parties hereto, and exclusive venue shall be in Rockwall County, Texas.

Section 13  Severability

In the event that any portion of this Agreement shall be found to be contrary to law, it is the intent of the parties hereto that the remaining portions shall remain valid and in full force and effect to the extent possible. 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. The provisions of this Agreement are severable.

Section 14  Non-Waiver

All rights, remedies, and privileges permitted or available to either party under this Agreement or at law or equity shall be cumulative and not alternative, and election of any such right, remedy, or privilege shall not constitute a waiver or exclusive election of rights, remedies or privileges with respect to any other permitted or available right, remedy or privilege. Additionally, one instance of forbearance by the either party in the enforcement of any such right, remedy or privilege against the other party, shall not constitute a waiver of such right, remedy or privilege by the forbearing party. A default by either party under this Agreement shall not result in a forfeiture of any rights, remedies, or privileges under this Agreement by such defaulting party.

Section 15  Authority of Parties. The City represents and warrants that this Agreement has been duly adopted by official action of the City Council in accordance with all applicable public notice requirements (including, but not limited to, notices required by the Texas Open Meetings
Act) and that the individual executing this Agreement on behalf of the City has been duly authorized to do so. MCVFD represents and warrants that this Agreement has been approved by appropriate action of MCVFD and that the individual(s) executing this Agreement on behalf of MCVFD has or have been duly authorized to do so.

Section 16 No Third-Party Beneficiaries. This Agreement inures only to the benefit of, and may only be enforced by, the parties to this Agreement.

Section 17 Cooperation. Each party to this Agreement shall, upon request of another party, execute and deliver such further documents and perform such further acts as may reasonably be requested to effectuate the terms of this Agreement and achieve the intent of the parties to this Agreement.

Section 18 Assignment

This Agreement shall extend to and be binding upon the parties and their respective successors and assigns; provided, however, that this Agreement may not be assigned without the written consent of both parties.

Section 19 Notice. All notices required or contemplated by this Agreement (or otherwise given in connection with this Agreement) shall be in writing, shall be signed by or on behalf of the person or entity giving the notice, and shall be effective as follows: (a) on or after the third (3rd) business day after being deposited with the United States mail service, certified mail, return receipt requested; (b) on the day delivered by private courier, private delivery or private messenger service (including overnight mail services such as FedEx or UPS) as evidenced by a receipt signed by any person at the delivery address (whether or not such person is the person to whom the notice is addressed); or (c) otherwise on the day actually received by the person to whom the notice is addressed, including, but not limited to, delivery in person and delivery by regular mail. Notices given pursuant to this section shall be addressed as follows:

To the City:

Attn: City Administrator
City of McLendon-Chisholm
1371 West FM 550
McLendon-Chisholm, Texas 75032

and

Chief Jim Simmons
City of McLendon-Chisholm
1371 West FM 550
McLendon-Chisholm, Texas 75032
To the MCVFD:  

Attn: Chief Patrick Murphy  
McLendon-Chisholm Volunteer Fire Department  
1250 State Highway 205  
McLendon-Chisholm, Texas 75087  

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed under authority of appropriate action taken by their respective governing bodies.

CITY OF McLENDON-CHISHOLM, TEXAS

Date: 10/4/18  
By: Keith Short, Mayor

ATTEST:  

Lisa Palomba, City Secretary

McLENDON-CHISHOLM VOLUNTEER FIRE DEPARTMENT:  

Date: 10/9/2018  
By: Patrick Murphy, Fire Chief