

Agreement Between

The Town of Charlotte and Charlotte Volunteer Fire and Rescue Services, Inc.

Incorporating First Amendment

THIS AGREEMENT, made this 17th day of June, 2014, by and between the Town of Charlotte and the Charlotte Volunteer Fire and Rescue Services, Inc.

WHEREAS, the Town of Charlotte (the "Town") is a Vermont municipality located in Chittenden County; and

WHEREAS, the duly elected Selectboard of the Town (the "Selectboard") has general supervisory authority over affairs of the Town; and

WHEREAS, Charlotte Volunteer Fire and Rescue Services, Inc. ("CVFRS"), is a Vermont non-profit corporation, having been duly incorporated under the laws of the State of Vermont on or about November 21, 1951; and

WHEREAS, CVFRS provides a variety of fire and rescue services to the Town, as further described below (the "Services"); and

WHEREAS, there is no formal agreement between the Town and CVFRS; and

WHEREAS, CVFRS receives both public and private monies to finance its fire and rescue operations; and

WHEREAS, the Selectboard has the exclusive authority to manage and distribute public monies authorized by the voters to support CVFRS and a fiduciary responsibility to ensure that any expenditures are reasonable and appropriate; and

WHEREAS, the fire and rescue services provided by CVFRS serve the public good and fulfill an essential municipal function; and

WHEREAS, the Town wants to ensure that the fire and rescue services provided by CVFRS continue at the agreed upon level of service, that liability is minimized, and that an environment of cooperation, open communication, transparency and trust exists between the Town and CVFRS; and

WHEREAS, it is the mutual goal of the Town and CVFRS to serve the citizens of Charlotte and maintain the trust and support of the taxpayers to whom they each owe a fiduciary duty and obligation;

NOW THEREFORE, based on the foregoing premises, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Town of Charlotte and CVFRS hereby agree as follows:

1. Agreement Review

The parties hereby agree to review this Agreement at least once every two (2) years and make any changes that may be necessary and mutually agreeable.

2. Budget; Appropriation.

CVFRS shall present a capital equipment plan and an operating budget to the Selectboard in advance of any annual or special meeting involving consideration by the voters of a budget for the Town that includes funds for CVFRS. The CVFRS proposed plan and budget shall be in such form, and contain such level of detail, as is mutually agreed upon but, at a minimum, shall include revenue and expenses for the Services to be provided, as well as all anticipated revenues and estimated expenditures from reserves or special funds. The budget shall be submitted using the same time schedule required of Charlotte town departments. Upon request, a CVFRS representative familiar with the proposed budget shall appear at one or more public meetings of the Selectboard to discuss the budget and answer any questions that the Selectboard and members of the public may have.

Any Town appropriation to CVFRS shall be distributed by the tenth (10th) of each month in increments equal to 1/12 of the approved annual appropriation.

CVFRS shall meet with the Selectboard to discuss the status of its budget for the fiscal year at least once per quarter during the fiscal year.

Town funds appropriated for the Services and not expended by the CVFRS in the same fiscal year shall become the property of the CVFRS (the "Operating Surplus") and shall be contributed to a CVFRS Operating Reserve Fund. The cumulative cap for the Operating Reserve Fund shall be equal to 10% of the average operating appropriation from the Town to the CVFRS for the three prior fiscal years. Any monies in the Operating Reserve Fund that exceed this cap shall be deemed Excess Surplus. Any and all Excess Surplus shall be returned to the Town in a manner to be determined by the Selectboard. The Operating Reserve Fund shall be used by the CVFRS to fund operating expenses.

Where CVFRS operating expenses exceed operating revenues by more than the amount budgeted for a fiscal year, it shall be the responsibility of the CVFRS to cover said shortfall (the "Deficit") up to a cap of 10% of the average operating appropriation from the Town to CVFRS for the three prior fiscal years. The Town may, but is not required to, provide funding to cover the Deficit in excess of the 10% cap. CVFRS will make all reasonable efforts to stay within budget, and shall inform the Selectboard promptly if it is perceived that there may be a deficit that could necessitate a request for additional funding from the Town.

3. Level of Service; Changes in Service.

In exchange for the distribution of public funds, described above, CVFRS shall provide the Town with all of the following "Services": (1) fire protection, (2) basic emergency medical services, (3) the following advanced rescue services: (a) paramedic-level rescue service, (b) vehicle extraction, (c) ice rescue, (d) water rescue and (e) rope rescue. In the event that CVFRS or the Town seeks to modify the agreed upon level of service, either by increasing services provided, eliminating an existing service, or expanding service into a new geographical area, each shall provide the other with at least 90-days advance notice, together with a written description of the proposed change(s) and the rationale for the same. In addition, CVFRS and the Selectboard shall meet to discuss the budgetary and other consequences of any proposed change. If both parties determine that the proposed change will not adversely affect the public good, will reasonably maintain public safety, and is fiscally prudent, the Selectboard and CVFRS may mutually approve the proposed change. No change in the agreed upon level of service shall occur absent such mutual approval.

All equipment and personnel necessary and proper for the performance of this Agreement shall be provided by CVFRS at its sole cost and expense (or as may be otherwise provided for herein), and all persons engaged in providing the Services shall be subject to the exclusive control, direction and supervision of the CVFRS.

4. Capital Expenditures; Financial Management.

Notwithstanding anything in this Agreement, all capital equipment purchases by CVFRS exceeding \$5,000 in total cost, using funds provided by the Town, shall require prior Selectboard approval unless specifically set forth in the CVFRS operating budget approved by the Town for the corresponding fiscal year or said purchase is of an emergency nature. CVFRS must notify the Selectboard that an emergency purchase is planned within 24 hours of CVFRS determining that such a purchase is needed. For the purposes of this Agreement, an "emergency nature" shall mean that CVFRS must immediately make the capital equipment purchase to avoid a negative impact to the level of service described above. Moreover, consistent with restrictions on the Fire & Rescue Reserve Fund, the Selectboard must approve any capital request from said fund up to and including a cost of \$50,000 prior to purchase. Any capital request from the Fire & Rescue Reserve Fund exceeding \$50,000 in total cost cannot be purchased without first obtaining voter approval. Proceeds from the sale of any equipment originally purchased using monies from the Fire & Rescue Reserve Fund shall be returned to that Fund, unless otherwise authorized by the Selectboard.

Notwithstanding anything in this Agreement, CVFRS shall not sell, barter, lease, distribute, dedicate, loan, encumber or convey property or equipment, exceeding \$5,000 in value, purchased using funds provided by the Town, without prior Selectboard approval.

CVFRS shall develop, and update as needed and at least annually, an inventory of assets acquired or enhanced through funds contributed by the Town for submission to the Selectboard. The original cost, date of acquisition and estimated useful life of such assets shall also be included in the inventory. The parties shall work in good faith to resolve any differences regarding the content of the inventory and may seek assistance from qualified professionals, as appropriate.

CVFRS shall budget for, and have performed on an annual basis, an audit of its financial statements (including any special funds) by a Certified Public Accountant licensed and in good standing in Vermont.

CVFRS shall provide to the Selectboard, within sixty (60) days of the issuance of a final audit report, a written response to any recommendations provided in said audit. The CVFRS shall schedule said audit so that the final audit report shall be ready for printing in the Annual Town Report. Reasonable efforts shall be made to have the written response ready for printing in the Annual Town Report as well.

5. Communication; Town Representation on CVFRS Board; Conflicts.

At least one member of the Selectboard shall be appointed by the Selectboard to serve on the CVFRS Board for a one-year term (the "Selectboard Member of the CVFRS Board"), which appointment shall continue from year to year (absent removal by the Selectboard or resignation) unless and until a replacement is designated by the Selectboard. The Selectboard Member of the CVFRS Board shall have the same rights, duties, and obligations as any other CVFRS Board member.

CVFRS, through the Selectboard Member of the CVFRS Board, shall provide the Selectboard with copies of all CVFRS corporate board meeting minutes, monthly financial statements (including Revenue and Expenses by Department, Budget versus Actual, Patient Billing Summary, and account balances), budget and audit reports, and any amendments to CVFRS' articles, bylaws or standard operating procedures or guidelines. CVFRS shall also provide the Selectboard copies of all notifications from supervisory or regulatory agencies regarding compliance with certifying or licensing agency requirements that affect or may potentially affect the ability of CVFRS to provide the full level of services agreed to in Section 3 of this agreement. Such copies shall be provided to the Selectboard within two business days of receipt by CVFRS.

In the event of a conflict between the interests of CVFRS and the Town, the Selectboard Member of the CVFRS Board shall have a first duty of loyalty to the Town. In the event of a conflict between the provisions of this Agreement and CVFRS' articles, bylaws and/or standard operation procedures and guidelines, this Agreement shall control.

Notwithstanding any of the foregoing, the parties acknowledge that CVFRS is not a "public body" or "public agency" within the meaning of either Vermont's Public Records Act or Open Meeting Law, and nothing in this Agreement shall give rise to any right or remedy against CVFRS under the provisions of law related thereto. The Town alone shall have the right to enforce a breach of this Agreement on behalf of the residents of the Town against CVFRS or any member or officer thereof.

6. Indemnification; Insurance.

CVFRS and the Town shall indemnify and save each other harmless from and against all loss, cost, damage, liability, and expense, including reasonable attorneys' fees, arising from injury or death of any person or damage to property in and about the Fire Station building and any fire and rescue vehicles or equipment, including but not limited to injury or death of any person or damage to property caused by failure to maintain the Fire Station building, grounds, and equipment or in training for or responding to an emergency situation, except for grossly negligent acts or omissions or intentional misconduct by either party. This indemnification shall survive the termination of this Agreement.

CVFRS shall at all times budget, pay for and maintain a policy or policies of general liability insurance, naming the Town as an additional insured, against all claims or demands for personal injuries to, or the death of, any person, and damage to or destruction or loss of property, which may have, or may be claimed to have, occurred in or about the Fire Station building and lands, or involve other property or equipment, whether or not owned by the Town, in the amount of not less than One Million Dollars (\$1,000,000.00) per person or occurrence, and Three Million Dollars (\$3,000,000.00) per claim. CVFRS shall deliver to the Town a certificate of such insurance coverage by the first day of each fiscal year (July 1), and shall provide a new certificate at the beginning of each fiscal year thereafter. Such policy or policies of insurance shall not be cancelled, reduced in amount, or materially reduced in coverage, except upon 60-days written notice to the Town.

7. Compliance with Law.

CVFRS shall at all times comply with all local, state, and federal laws, ordinances, orders and regulations in connection with its operation of a fire and rescue service.

8. Necessary Actions.

CVFRS and the Town hereby agree to take or cause to be taken such further actions, and to execute, deliver and record, or cause to be executed, delivered and recorded, such further documents and instruments that may be reasonably necessary to fully effectuate the purposes, terms and conditions of this Agreement.

9. Termination.

This Agreement shall terminate upon any of the following events:

- a. The dissolution, insolvency or bankruptcy of the CVFRS;
- b. The dissolution, insolvency or bankruptcy of the Town;
- c. The expiration of one hundred and eighty (180) days after CVFRS' receipt of written notice that the Town has adopted a resolution establishing a municipal department that performs the Services;
- d. The expiration of one hundred and eighty (180) days after CVFRS' receipt of written notice that the Town intends to use another entity to provide the Services;
- e. The expiration of one hundred and eighty (180) days after Town receipt of written notice that the CVFRS no longer intends to provide the Services.
- f. The parties enter into a new written agreement which expressly supersedes this Agreement.

10. Effects of Termination

Upon the termination of this Agreement all obligations of the parties to the Agreement shall cease except for those obligations created by this section:

- a. The parties acknowledge that the Town has made substantial contributions of funds to acquire or enhance assets held by CVFRS, including the fire station building, vehicles and equipment. Thus, in the event of a termination pursuant to Paragraphs 9.a, 9.c, 9.d or 9.e, above, CVFRS shall endeavor to restore to the Town the fair market value of those contributions.
- b. In the event of a termination, as described above, CVFRS shall either:
 - i. Dispose of the inventory of assets by conveyance, distribution or dedication to the Town by the CVFRS Board at a Special CVFRS Board Meeting called for that purpose; or
 - ii. (a) Reimburse the Town in cash for the fair market value of the fire station building, as determined by the Town's hired appraiser, using generally accepted real estate appraisal methodology. Any issues or

disputes under this subsection shall be referred to a mutually agreed qualified appraiser for final resolution; and

(b) Reimburse the Town in cash for the fair market value of any vehicles or equipment acquired or enhanced through funds contributed by the Town. Any issues or disputes under this subsection, including issues regarding valuation or depreciation/useful life, shall be referred to a mutually agreed qualified appraiser for final resolution.

By mutual agreement, the parties may modify this subsection (b) to allow for reimbursement to the Town through any combination or apportionment of assets (including any property, whether real or personal and tangible or intangible) and cash that they deem appropriate.

c. All other assets and funds of CVFRS shall be disposed of in a manner prescribed by the then in force articles and by-laws of CVFRS.

11. Amendment.

This Agreement may be amended or modified by mutual written agreement of the parties.

12. Notice.

Any notice required to be given under this Agreement shall be in writing and mailed to the addresses listed below (or such other address as a party may designate) or hand delivered to the other party at a duly warned meeting of CVFRS or the Selectboard.

TOWN OF CHARLOTTE
159 Ferry Road
P.O. Box 119
Charlotte, VT 05445

CVFRS
170 Ferry Road
P.O. Box 85
Charlotte, VT 05445

13. Governing Law; Severability

This Agreement shall be governed by the laws of the State of Vermont. All rights and remedies provided by this Agreement or by law or in equity or by statute shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy now or hereafter existing to enforce this Agreement. If any provision of this Agreement shall be deemed to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law.

14. Entire Agreement.

This Agreement represents the entire agreement between the parties and all prior agreements, offers, negotiations and representations not herein expressly contained shall be of no force and effect.

15. Assignment; Binding Agreement.

CVFRS shall not assign this Agreement or any interest hereunder without the written approval of the Selectboard. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

16. No Waiver.

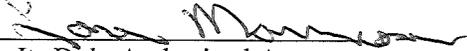
No failure by either party to insist upon the strict performance of any term hereunder or to exercise any right, power, or remedy consequent upon a breach thereof shall constitute a waiver of any breach of any such term. No waiver of any breach shall affect or alter this Agreement, which shall continue in full force and effect, or the rights of either party with respect to any other existing or subsequent breach.

17. Captions.

The captions or marginal words are inserted only as a matter of convenience and reference and in no way define, limit, or describe the scope of this Agreement nor the intent of any provisions hereof.

DATED at Charlotte, Vermont, this 17 day of June, 2014.

TOWN OF CHARLOTTE

By: 
Its Duly Authorized Agent

CHARLOTTE VOLUNTEER FIRE AND
RESCUE SERVICES, INC.

By: 
Its Duly Authorized Agent