

## MEMORANDUM OF UNDERSTANDING FOR FUNDING OF FIRE PROTECTION SERVICES

This MEMORANDUM OF UNDERSTANDING (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **Board of County Commissioners of Muskogee County, a political subdivision of the State of Oklahoma (the "County")** and \_\_\_\_\_ **Fire Department, a Title 19 County Fire Department duly and legally created under the provisions of 19 OS § 351 (the "Department")**.

WHEREAS, on or about September 6, 2005, the Board of County Commissioners of Muskogee County, Oklahoma, did adopt and pass a resolution levying a 0.0015 percent sales tax upon the gross proceeds of all sales taxable under the Oklahoma Sales Tax Code (the "2005 sales tax").

WHEREAS, said sales tax was dedicated to the improvement of fire protection emergency response services throughout Muskogee County, including the construction of new fire stations, the purchasing of communication equipment, the purchase of emergency response vehicles and equipment, and for the general maintenance and operation of the Muskogee County fire service.

WHEREAS, each fire department in Muskogee County would benefit from receiving a portion of the revenues generated by the 2005 sales tax, and whereby the County has the authority to enter into agreements for the furnishing of fire protection services to residents of Muskogee County pursuant to 19 OS § 351.1;

WHEREAS, by Section 23 of the Muskogee County, Oklahoma Special Sales Tax Resolution dated September 6, 2005, the people of Muskogee County authorized the Board of County Commissioners of Muskogee County, Oklahoma, to make administrative changes or additions to the administration of the Muskogee County, Oklahoma Special Sales Tax Resolution dated September 6, 2005, not relating to the rate of taxation.

WHEREAS, Section 339 of Title 19 of the Oklahoma Statutes charges the Board of County Commissions of Muskogee County, Oklahoma, with management of all money belonging to Muskogee County.

WHEREAS, Section 351 of Title 19 of the Oklahoma Statutes grants the Board of County Commissioners of Muskogee County, Oklahoma, with full power to provide firefighting services in Muskogee County, including the ability to acquire firefighting equipment, operate fire stations, and employ necessary firefighting personnel.

WHEREAS, the Board of County Commissioners for Muskogee County wish to provide full transparency and accountability regarding the use of the Public's Money, and whereby the Board of County Commissioners is charged with ensuring that the Public's Funds are used in accordance with Oklahoma State Statutes, County Policies, Uniform Guidance, and Generally Accepted Accounting Practices.

WHEREAS, the Department wishes to enter into an Agreement with the County to provide such fire protection and emergency services and to receive a portion of the revenues from the 2005 sales tax to do so.

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and value consideration, the receipt of which is hereby acknowledged, the County and the Department agree as follows:

## TITLE I – FUNDING

### Section 1. Purpose

The purpose of this Agreement is to define the responsibilities of the County and the Department as they relate to the County's provisions of funding to the Department for fire protection services to the Department's area of responsibility. Execution of this Agreement shall serve as an attestation by the Department that the same is a legally organized Title 19 County Fire Department organized under 19 OS § 351 and is eligible, under state law, to receive public funding. For the purpose of this agreement, "Department" shall mean both the official Title 19 County Fire Department and any associated non-profit, auxiliary association which supports the Department (the "Auxiliary Association"). Both the Department and the Auxiliary Association are equally bound by the terms of this agreement, and a reference to one shall in all cases be deemed a reference to both and the other.

### Section 2. Effective Date and Duration

This Agreement shall not take effect unless and until it has been duly executed by both parties. This Agreement shall remain in effect until June 30, 2023, unless terminated sooner pursuant to the provisions of this Agreement. This Agreement shall automatically renew at the end of the current fiscal year for additional successive one-year periods unless either of the parties take appropriate actions to terminate this Agreement. Termination of this Agreement may be terminated for any reason by one party giving the other party sixty (60) days advance written notice. PROVIDED, the County's obligations under this Agreement are expressly made contingent upon the County appropriating the funds necessary to support this Agreement.

### Section 3. Party Representatives

Each party to this Agreement shall designate an individual (a "Representative"), who may be designated by title or position, to oversee and administer such party's participation in this Agreement. The parties' initial Representatives shall be as follows:

County's Representative:	Jeff Smith
	Muskogee County Emergency Management
	400 W Broadway
	Muskogee, OK 74401

Department's Representative:

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Each party may change its Representative at any time by delivering written notice of such party's new Representative to the other party.

**Section 4. Performance**

- A. Subject to the terms of this Agreement, the Department shall have the responsibility for the operation of a Title 19 county fire protection service in the Department's area of responsibility which meets or exceeds all applicable state and federal regulations applicable to a fire protection service. This obligation includes, but is not limited to, selecting and credentialing the number, function, qualifications, and compensation, including salary and benefits of its employees, agents, and independent contractors and shall control the terms and conditions of such engagements relating to such employees, agents, and independent contractors. All such employees, agents, and independent contractors shall be and forever remain agents of the Department and not the County. The Department is solely responsible for the dealings with personnel. No funds made available under this Agreement shall be used for any other purpose other than the purposes allowed by Oklahoma state law, the policies of the County, or provisions of the 2005 sales tax.
- B. To assist the Department in the operation of its fire protection service, the County will make available to the Department the Department's proportionate share of revenues from the 2005 sales tax (the "Funds") as prescribed in the ballot language. Revenue to support this Agreement shall come exclusively from the 2005 sales tax, should revenues generated thereby not be sufficient to cover the projected amounts as determined by the County, the County shall not be liable to the Department for any deficiency under any circumstance.
- C. The Funds may only be used by the Department for following purposes and no other (collectively the "Allowable Costs") as defined in 19 OS § 351 and the 2005 sales tax:
  - 1. To construct new fire stations or improve existing fire stations
  - 2. To purchase communications equipment and defray training and fire education costs
  - 3. To purchase firefighting and other emergency response vehicles and equipment
  - 4. For the general maintenance and operation of the fire protection servicePROVIDED, no portion of the Funds may be used for the payment of wages or salaries for any firefighter. PROVIDED FURTHER, no portion of the Funds may be used to improve any real property, or structure thereupon, which has is not owned by the County or a part of long-term leasehold benefiting the County.
- D. The Funds shall always and at all times, remain in the custody and control of the Muskogee County Treasurer's Office in a specific account for the benefit of this Agreement. The County shall never make any direct payment of any portion of the Funds

to the Department. Instead, the Department may request use of the Funds to pay for Allowable Costs as follows:

1. The County will pay for the Department's Allowable Costs of providing fire protection services under this Agreement only in accordance with county purchasing statutes prescribed in 19 OS § 1500 *et seq.*, and 61 OS § 101 *et seq.* (also known as the Public Competitive Bidding Act) including, but not limited to approval of each proposed use of the Funds by the Board of County Commissioners of Muskogee County.
2. The Department shall designate in writing two officials of the Department as requisitioning officers and two officials as the Department as receiving officers. No one person may simultaneously serve as both a requisitioning officer and as a receiving officer. Such written designation shall be filed in the Muskogee County Clerk's Office, who shall ensure the same is entered into the minutes of the Board of County Commissioners of Muskogee County. The Department shall provide evidence of blanket bond coverage or employee dishonesty liability insurance for each official so designated together with such written designation. The amount of such coverage shall be equal to the amount which would otherwise be required of an employee of the County or as otherwise required by state law, whichever is greater.
3. Concerning the use of Funds for Allowed Costs, the Department shall follow the county purchasing procedures in the same manner and to the same degree as the County is required to do so. The Department's requisitioning officers and receiving officers shall perform all duties imposed by law upon a County requisitioning officer or receiving officer as it relates to the use of the Funds for Allowed Costs in the same manner and to the same degree as the County is required.
4. The Department shall provide any additional documentation the County may reasonably require ensuring the Department's use of the Funds is consistent with state law and county purchasing and inventory requirements.
5. In the provision of the fire protection services under this Agreement, the Department shall handle, in general, all business transactions, contracts, leases, and the like in the same manner and to the same degree as any other County office is required to do so under Oklahoma state law.

E.

1. In the provision of the fire protection services under this Agreement, the Department shall maintain and continuously update an inventory of all tools, apparatus, machinery, and equipment purchased by the Department as an Allowable Cost in accordance with the county inventory statutes, including but not limited to 19 OS §178.1 *et seq.*, in the same manner and to the degree as the County is required. Such inventory shall be on an Oklahoma State Auditor and Inspector approved form. The Department shall file a copy of the inventory required hereby in the Muskogee County Clerk's Office.
2. All tools, apparatus, machinery, and equipment purchased by the Department as an Allowable Cost under this Agreement shall be and forever remain property of

the County. The County consents to the Department's use of the same to further the purposes of this Agreement for so long as this Agreement is in place. Should this Agreement be terminated for any reason, the Department shall immediately surrender to the County any and all tools, apparatus, machinery, and equipment purchased under this Agreement regardless for the same's value or remaining useful life. PROVIDED, at the end of the useful life of any such tools, apparatus, machinery, or equipment, the Department may request the County deem the same surplus to the needs of the County and simultaneously request the County donate the same to the Department. The County shall retain complete discretion in determine if to deem any such tools, apparatus, machinery, or equipment surplus to the needs of the County and if, having so determine, to donate the same to the County.

- F. The Department shall indemnify and hold harmless the County for all claims for damages of whatsoever kind, character, quality, or quantity, whether at law or equity, arising from the Department's use of the tools, apparatus, machinery, and equipment purchased by the Department as an Allowable Cost under this Agreement.

#### **Section 5. Open Meetings and Open Records**

In the provision of the fire protection services under this Agreement, the Department shall be bound by the requirements of the Oklahoma Open Meeting Act, 25 O.S. § 301 *et seq*, as amended, and the Oklahoma Open Records Act, 51 O.S. § 24A.1 *et seq*, as amended, in an identical manner to how the County is bound by such Acts. For the sake of this agreement, the Department shall operate as a "public body" in all instances for the purposes of both Acts and shall not claim to be otherwise for any purpose.

#### **Section 6. Records and Reporting**

In the provision of the fire protection services under this Agreement, the Department agrees to keep records of its operations. Such obligation shall include, but not be limited to, keeping and maintaining meeting agendas, meeting minutes, monthly bank statements of all funds under the Department's control, annual budgets, annual audits, inventory records of all personal and real property, grant documentations, list of governing body members, and a list of fees and charges charged and collected by the Department. All such records shall be filed in the Muskogee County Clerk's Office. Non-County funds, such as funds obtained through membership dues and the like, may be kept in non-County bank accounts which are not under the control of the Muskogee County Treasurer's Office, PROVIDED, the Department shall keep of list of all such non-County banks and such accounts shall be held in accordance with the requirements of Oklahoma state law and the regulations of the Oklahoma State Auditor and Inspector's Office.

### **TITLE II – MISCELLANEOUS**

#### **Section 7. Nondiscrimination**

The Department agrees it will not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age, and will take affirmative steps

to ensure applicants are employed, and employees are treated during employment, without regard for race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age.

**Section 8. Assignment.**

Neither Party may assign this Agreement without the prior written consent of the other. Any purported assignment in contravention of this Section shall be void.

**Section 9. Severability.**

If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement, and the application of this Agreement to other circumstances, shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

**Section 10. Governing Law.**

This Agreement is entered into under and pursuant to and is to be construed and enforceable in accordance with, the laws of the State of Oklahoma, without regard to its conflict of laws and principles. All actions or legal proceedings arising out of or relating to this Agreement shall be brought in the courts of records of the State of Oklahoma in Muskogee County or in the United States District Court for the Eastern District of Oklahoma. Each Party consent to the sole and proper jurisdiction of such courts in any actions or legal proceedings and waives any objection to the laying of venue of any such action or legal proceeding in such courts.

**Section 11. Reasonable Actions Required.**

Notwithstanding any provision of this Agreement to the contrary, the Department agrees to perform all acts reasonably necessary to ensure the County's compliance with all laws related to the accounting, reporting, recording, and retention of all revenues and expenditures of public funds.

**Section 12. Amendment**

Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated, unless as otherwise provided for herein, except by an instrument in writing signed by an authorized representative of the Party against whom the enforcement of the change, waiver, or termination is sought.

**Section 13. Waiver and Remedies**

No failure or delay by a Party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity. Every remedy given by this Agreement

may be exercised from time to time and as often as may be deemed expedient by the Party exercising such remedy.

**Section 14. No Third-Party Beneficiaries.**

There are no intended third-party beneficiaries under this Agreement, and no third party shall have any rights or make any claim thereunder, it being intended that solely the Parties hereto shall have rights and may make claims hereunder.

**Section 15. Headings**

All headings and subheadings employed within this Agreement and in the accompanying schedules and exhibits are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

**Section 16. Counterparts.**

This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. This Agreement may be executed by the Parties and transmitted by facsimile or electronic transmission and if so executed and transmitted, shall be effective as if the Parties had delivered and executed original of this Agreement.

**Section 17. Benefits and Obligations.**

The covenants and agreements contained herein shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors and assigns.

**Section 18. Entire Agreement.**

This Agreement, including the exhibits and schedules attached hereto, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes and replaces all prior negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements, or understandings, whether oral or written.

**Section 19. Acknowledgement.**

The Parties acknowledge that have been provided with a copy of this Agreement for review prior to signing it, that they have been given the opportunity to review it prior to signing it, that they have been given the opportunity to have this Agreement reviewed by their respective attorneys prior to signing it, and that they understand the purpose and effect of this Agreement.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed on behalf of such party by an authorized representative.

BOARD OF COUNTY COMMISSIONERS OF  
MUSKOGEE COUNTY

\_\_\_\_\_  
DEPARTMENT

FIRE

\_\_\_\_\_  
By Chairman

\_\_\_\_\_  
By Chairman

\_\_\_\_\_  
Attest by County Clerk

\_\_\_\_\_  
Attest by Secretary

JOINED IN FULL BY the associated non-profit, auxiliary association which supports the Department.

\_\_\_\_\_, INC.

\_\_\_\_\_  
By Chairman

\_\_\_\_\_  
Attest by Secretary