Meeting with Fletcher Fire & Rescue Board Members to Discuss Proposed Contract Revisions

January 25, 2024

Mayor Blakeley and Councilman Lance met this morning with three members of the Fletcher Fire & Rescue Board. The three members of the Fire Board were Hugh Clark, Mike Sorrel, and James Bruggeman. The purpose of this meeting was to discuss a list of proposed revisions to the contract that were previously submitted by Council to the Fire Board. The Fire Board wanted an opportunity to respond to the proposed revisions.

The following are notes highlighting the response or position of the Fire Board to the specific revisions that were recommended by Council. The revisions that were suggested by Council are highlighted in yellow. The response from the Fire Board is highlighted in blue.

AGREEMENT

THIS AGREEMENT, made and entered into this the 8TH day of January, 2024 by and between the TOWN OF FLETCHER, a municipal corporation created by enactment of the General Assembly of North Carolina in 1989, herein after referred to as the "Town" and FLETCHER FIRE AND RESCUE DEPARTMENT, INC. a non-profit corporation organized and existing under the laws of the State of North Carolina, hereinafter referred to as the "Fire Department", (Fire Department wanted the date of agreement to match the budget year date, July 1, 2024)

WITNESSETH:

The Town agrees to pay for fire protection and emergency medical service at the basic EMT level to be provided by the Fire Department and the Fire Department agrees to furnish to the Town fire protection and EMT level service of all properties lying in the municipal fire district (hereinafter also referred to as "territory"), upon the following terms and conditions:

1. This Agreement shall be valid for a term of three (3) years, beginning the date of this agreement, and may be extended for an additional term of the same number of years upon written consent of both the Town and Fire Department. (FF&D ok with this.)

2. The Town shall pay to the Fire Department a contracted sum which shall be a portion of the Town's ad valorem tax levy as determined annually by the Fletcher Town Council for property lying within the municipal fire district except for the area contracted to Mills River Fire & Rescue. In addition, the Town will pay the difference between the current approved tax levy for Mills River Fire & Rescue and the approved tax levy for the Fire Department for the land and area contracted to Mills River Fire & Rescue if that amount is less than what is budgeted for the Fire Department in any given year. This additional payment will become effective in the Fiscal Year beginning July 1, 2024. (Alright with this but want language stating that all value or revenues from area contracted

with Mills River Fire & Rescue be designated to FF&D once the Mills River contract expires in 2026.) The Fire Department may request additional funding beyond the contracted sum, however, such requests shall be negotiated at budget time from the Town. The Town shall pay on or before the fifteenth (15) day of each month for the proceeding month. The June payment shall include all monies due to June 30 of each contract year.

3. The Fire Department shall provide fire and emergency medical service at the basic EMT level annually. No other contracts shall hereafter be agreed upon for fire protection and basic EMT level of services within the municipal fire district excluding the Mills River Fire & Rescue agreement without notifying and negotiating with the Fletcher Fire and Rescue Department. Written notice of termination by either party shall not be less than one (1) year prior to the end of the current contract. The written notification shall show just cause for the termination. (Ok with this but want any notification of a termination of contract to coincide with the start of a fiscal year. Added FD Wording: *Provided required funding is provided the)* Fire Department will obtain and keep in proper repair all necessary equipment and the minimum number of trained and qualified firefighters as may be required to maintain the Fire Department's minimum staffing policy and current fire rating as of January 8, 2024 or better for the territory covered by the Fire Department.

4. The Town may inspect all books and accounts for the Fire Department at any time that it desires. It is further agreed that the Fire Department will present the Town with an annual audit and accompanying management letter prepared by a CPA which shall be in conformity with generally accepted accounting principles. (GAAP). Audit shall be turned into the Town Manager by December 31 of each year. (Ok with this being the Town Manager or designee being allowed to inspect their books during normal business hours of Monday through Friday, 8 a.m.- 5:00 p.m.)

In event that the audit or management letter reveals a reportable and/or material issue(s) with regard to compliance with generally accepted accounting principles, the Fire Department shall provide a written statement that contains an explanation of each such issue and an action plan (with implementation timetable) for resolving each issue and shall provide quarterly periodic reports to the Town on progress made in resolution of each issue.

Should the Fire Department fail to submit its audit report to the Town within the above time period, the Town may suspend all funds immediately until the audit is delivered as set forth above. The Fire Department may request, and the Town may approve, a reasonable submittal extension if the Fire Department is unable to deliver the audit for reasons beyond the control of the Fire Department or the Fire Department's auditor.

5. Because of the Fire Department's reliance on public funds for its operations, the public has a continuing interest in the Fire Department's decision-making processes and decisions regarding the spending of those funds. To ensure public trust, the Fire Department agrees that its Board of Directors' meetings will be open to the public.

To ensure the ability of the public to attend those meetings, the Fire Department agrees to provide public notice of such meetings. Public notice methods should include the Fire Department website.

The Fire Department and the Town agree that public notice of a Board of Directors meeting called in the midst of a declared disaster or emergency to make decisions required to respond to that disaster or emergency is not practical, and, therefore, not required. (Not comfortable with this entire section but will add a provision where the public is allowed to voice a complaint or concern to the Board.)

6. The Fire Department shall present to the Town during the month of March of each contract year a proposed budget for the provision of fire and EMT medical services in the Town of Fletcher. (Added FD Wording: *It is understood that the final adopted budget may not be adopted till the 3rd week of May annually.* Ok with this but their proposed budget is not fully known until early May.)

7. The Fire Department shall use the funds subject to this Agreement in accordance with the Annual Fire Department Budget. The parties further agree as follows:

a. The Fire Department agrees to utilize and follow their purchasing policy set by the Fire Department.

b. The Fire Department and the Town agree that, in the event of a bona fide emergency, the Fire Department may proceed with emergency purchases without seeking formal or informal bids as described herein. (Ok with this section.)

8. Because of the Fire Department's reliance on public funds for its operations, the public has a continuing interest in the Fire Department's current Fund Balance and reserves. The Fire Department will establish a formal Fund Balance Policy. The Fund Balance Policy will establish a minimum threshold for Fund Balance that is no lower than 8% as recommended by the North Carolina Local Government Commission. Additionally, the Fund Balance Policy should specify an upper threshold for fund balance and how funds are used that exceed the maximum threshold. The Town recommends a 25% upper threshold, but the Fire Department may adopt a varying threshold as necessary. If the Fire Department must go below 8% a plan should be established to get back to the minimum threshold and the plan should be provided to the Town. Additionally, the Fund Balance Policy will define the process for committing Fund Balance amounts towards reserve accounts. Reserve accounts may be used for one-time expenditure such as capital (e.g., fleet purchase and replacement, construction, maintenance) and must be tied to formal Capital Planning documentation (e.g., CIP). (Ok with this section.)

9. If the Town determines that the Fire Department has failed to render (i.e. emergency calls unanswered) the fire protection or other emergency services to the district as provided in this agreement, then the Town shall give the Fire Department ninety (90) days advance written notice that the funds allocated are subject to suspension. If during the said ninety (90) day period, the Fire Department makes improvements satisfactory to the Town, no suspension shall occur. During the ninety (90) day period, the Fire Department is not relieved of their responsibility to provide fire protection and other emergency services in a manner otherwise consistent with the terms of this agreement. (Ok with this section).

10. In the event that the Fire Department's Board of Directors determines that the Fire Department is unable to reliably deliver the services described herein, for any reason or no reason, the Fire Department's Board of Directors shall immediately so notify the Town, at which time the

Town is authorized to use such Fire Department facility and equipment located at 49 East Fanning Bridge as are necessary to maintain the delivery of fire and other emergency services in the district.

In the event of a liquidation or dissolution of the Fire Department pursuant to cessation of services or action by the Fire Department's Board of Directors, all equipment, assets and real property owned by the Fire Department located at 49 East Fanning Bridge, acquired with tax funds collected by the Town and appropriated to the Fire Department shall be assigned to the Town in a proportion equivalent to the Town's tax fund contribution to the Fire Department's budget at the time the asset, equipment and/or real property was acquired. Such assets shall be assigned or distributed by the dissolving Fire Department to its successor in fire protection within the Fire Department's town district.

This section shall not apply if the dissolution is the result of a deliberate act on the part of Town to assume immediate and complete control of fire protection in the Fire Department's service area notwithstanding the Fire Department's willingness and ability to continue delivery of services in compliance with this agreement. (Their board wants to reword this section.)

11. The Fire Department shall continuously comply with its Corporation By-Laws set by their Board of Directors. The Fire Department shall comply with the requirements of the Office of State Fire Marshal as well as provisions of Department of Insurance, as some may be updated, amended, or replaced from time to time. Cases in which the Fire Department loses or receives a reduced rating will be examined by the Town and County Department of Emergency Services.

The Fire Department shall take all actions as required to maintain its present nonprofit corporation status pursuant to Chapter 55A of the North Carolina General Statutes. (Ok with this section.)

12. If for any reason the current insurance rating is revoked by the North Carolina Fire Insurance Rating Bureau, the Fletcher Town Council shall review the reasoning for such revocation. If it is found during the review to be due to the failure of the Town to keep the current rating, the Town council shall not terminate this contract and the Town will assist the Fire Department in securing the present rating.

If it is found during the review to be due to the failure of the Fire Department to keep the current rating, the Town Council shall give the Fire Department one (1) year to reinstate the current rating.

13. The Fire Department shall be an independent contractor in performing its functions under this contract.

14. The Fire Department shall obtain and keep in full force and effect at all times during which this contract or any extension hereof is in effect adequate liability insurance on all of its equipment and (Added FD Wording: *Henderson County*) shall adequately insure all of its active members against accidental injuries suffered in the performance of their duties as firefighters. (Want to add language specifying that Henderson County provides workers compensation coverage for employees.)

15. The Town shall be free from any and all liabilities incurred in connection with the functioning of the Fire Department in any manner. The Town shall be free from any and all claims and liabilities for any damages, injuries, or accidents resulting from the execution of the Fire Department of its duties.

16. It is understood and agreed by the parties hereto that in the event any provision of this contract is determined by a court of competent jurisdiction to be invalid, such jurisdiction shall not be deemed to render other provisions hereof invalid and this contract shall otherwise continue in full force and effect.

17. The Fire Department shall appoint the Fire Chief for the municipal fire district. Henderson County shall appoint a Fire Marshall who is responsible for all fire inspections within the municipal limits. If the Fire Chief is replaced during this contract, a new fire chief shall be appointed by the Fire Department. (Ok with this section).

18. The Town shall appoint a representative to serve as a liaison representative between the Town and the Fire Department. The Fletcher Fire and Rescue Board of Directors may appoint this liaison representative as a member of the Board of Directors.

19. The bylaws of the Fire Department's Board of Directors shall be modified to include language that specifies that the Fletcher Town Council shall appoint three of the nine members of the Board of Directors. The removal of these members will be made solely by Town Council. Recommendations for removal from the Fire Department's Board of Directors will be highly considered during review. (Not comfortable with allowing Council authority to appoint fire board members. Would instead consider revising their by-laws to allow Council to recommend fire board members for appointment through a Town application process (possibly up to four board members that are residents of the Town). The fire board would have the final say on the appointment(s).)

20. If for any reason there is an impasse in the interpretation of this contract between the Town and the Fire Department both parties agree to have a qualified impartial mediator to help solve the impasse.

21. This contract shall become null and void, if for any reason, Fletcher Fire & Rescue Station 1 located at 49 East Fanning Bridge is re-located outside the boundaries of the town.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, this the

day and year first above written.