

## FIRE PROTECTION AGREEMENT

This Fire Protection Agreement (“Agreement”) is made and entered into as of \_\_\_\_\_ by and between the Town of Pomfret (“Pomfret”) the and Pomfret – Teago Volunteer Fire Department, Inc., a 501(c)(3) nonprofit corporation (“Department”).

### PREAMBLE

WHEREAS, The Department is and wishes to continue to be a private volunteer organization, separate and apart from Pomfret providing services to Pomfret as an IRS designated 501(c)(3) nonprofit corporation.

WHEREAS, the Department provides necessary and valuable fire protection and emergency rescue services to Pomfret;

WHEREAS, Pomfret relies on the Department for such services to its residents, inhabitants, visitors and properties;

WHEREAS, Pomfret recognizes a responsibility to provide an appropriate level of financial assistance to the Department in exchange for services provided by the Department;

WHEREAS, the Department recognizes that fund-raising is a necessary part of being a private nonprofit corporation.

WHEREAS, the Department recognizes that transparency is an important aspect receiving taxpayer assistance and of being a nonprofit organization performing a public function.

NOW, THEREFORE, in consideration of the foregoing preamble, the mutual covenants, promises and agreements hereinafter set forth, the mutual benefits to be gained by the performance thereof, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and accepted, the parties to this Agreement, intending to be legally bound, hereby agree as follows:

### ARTICLE I DEFINITIONS

#### Section 1.1 Definitions

As used in this Agreement, the following terms shall have the following respective meanings:

“Annual Budget” is the Department’s projected annual operating income and expenses that will be used as the basis for developing an Annual Appropriation.

“Annual Appropriation” is the amount of taxpayer money agreed to by both parties to offset the Department’s annual operating expenses, which will be contained in a warned article to be voted on at the annual Town Meeting.

“Annual Town Meeting” means the Annual Town Meeting pursuant to 17 V.S.A. § 2640 (2013).

“Call” means an event or situation which the Department is requested to provide Services in response to such event or situation.

“Capital Equipment” includes any purchase of equipment or vehicles made from existing Reserve Funds. Capital purchases shall be made in accordance with Pomfret’s purchasing policy.

“Department” means the Teago Volunteer Fire Department, Inc., a 501(c)(3) nonprofit corporation and includes its membership.

“Dispatch” means the alerting of the Department personnel that there is a Call.

“Emergency Dispatch Services” means the operation of a communications center which receives notification of Calls, Dispatches the Department, and provides the Department with the means to request assistance from other Emergency Services Providers and public safety agencies, which is located in Woodstock, Vermont.

“Emergency Services Provider” or “ESP” shall mean the Fast Squad or any other organization authorized and able to provide Services within Pomfret.

“Failure to Respond” has the meaning set forth in Section 2.3 (B).

“Fiscal Year” shall mean the fiscal year of Pomfret which begins on July 1<sup>st</sup> of each year and concludes on June 30<sup>th</sup> of the following year.

“General Fund” means the General Fund of Pomfret, pursuant to 17 V.S.A. § 2664 (2015).

“Operating Funds” the amount of money requested by the Department to be appropriated by Voters for the Department’s fiscal year expenditures; generally, non-capital expenditures.

“Pomfret Funds” means taxpayer money of the Town of Pomfret.

“Pomfret Purchasing Policy” means the official purchasing policy of Pomfret (2014).

“Private Money” means donations or other money raised solely by the Department that will be put toward operating or capital expenditures.

“Reserve Fund” means a Reserve Fund pursuant to 24 V.S.A. § 2804 (2014), created and funded by Voters at Annual or Special Town Meeting and once established and funded is under the control and direction of the Select Board.

“Response Time” means the time that elapses between the moment of Dispatch and the moment the Department Personnel arrive at the location of the Call.

“Services” means non-medical emergency services, such as private fire alarm activations, as well as emergency services, such as motor vehicle accidents, wires down, car fires, grass and brush fires, mutual aid requests, structure fires and natural disasters. Services specifically exclude emergency medical services and patient transport.

“Service Area” means Pomfret, which is the area within which the Department is responsible for providing Services. Service area also includes areas outside of Pomfret where the Department provides service through its mutual aid agreements.

“Station” means one of two locations, one in South Pomfret and one in North Pomfret, at which the Department stores its apparatus and equipment and from which it responds to Calls.

“Special Town Meeting” means a Special Town Meeting pursuant to 17 V.S.A. § 2643 (2015).

“Voter” means a registered voter of Pomfret, Vermont.

## **ARTICLE II PROVISION OF SERVICES**

### **Section 2.1 Services**

The Department agrees to provide Services to, and for the benefit of, the residents, inhabitants, visitors and properties of Pomfret within its Service Area.

### **Section 2.2 Obligation to Provide Services**

The Department shall provide Services 24 hours a day, 7 days a week, throughout the year.

### **Section 2.3 Provision of Services**

It is understood that the Department is a volunteer organization and does not regularly staff the Station, meaning that the Department personnel available to respond to calls must first travel to the Station from wherever they are located at the time the call is dispatched. It is further understood that the Service Area is rural in nature and is prone to inclement weather. It is understood the Department response time for a call may be delayed or inhibited by these factors. However:

- (A) If the Response Time for a call exceeds 45 minutes, the Department will provide Pomfret with the reason(s) for the delayed Response Time.
- (B) If the Department Fails to Respond to more than 3 calls within a 6-month period, the Department will provide Pomfret with documentation as to why the Department failed to respond to the particular calls.
  - (i) For purposes of Section 2.3(B), "Fails to Respond" shall mean the failure of at least 1 member of the Department to respond to a call, thus necessitating that another ESP be dispatched to provide services.
  - (ii) The provision of Services by another ESP at the request of the Department because of the Department's active involvement in providing services in response to a prior call shall not constitute a "Fails to Respond."
  - (iii) The provision of Services by another ESP at the request of the Department because of that ESP's ability to provide services the Department is not trained or equipped to provide shall not constitute a "Fails to Respond."
  - (iv) The provision of Services by another ESP at the request of the Department because of that ESP's ability to arrive at the location of the Call more quickly than the Department shall not constitute a "Fails to Respond."
  - (v) The provision of Services by another ESP at the request of the Department because of the Department's inability to respond due to inclement weather or adverse road conditions shall not constitute a "Fails to Respond."
  - (vi) The provision of Services by another ESP at the request of the Department because of the Department's inability to respond due to equipment breakdown shall not constitute a "Fails to Respond;" provided, however, that if the Department knew of the breakdown prior to the Call being Dispatched, the Department made arrangements with the responding ESP for such provision of Services.

- (C) The Department shall respond to a Call as safely and promptly as possible, keeping in mind first and foremost the safety of the public at large and the requirements and limitations of applicable Vermont law.

#### **Section 2.4 Emergency Dispatch Services**

Pomfret shall be responsible for providing the Department with Emergency Dispatch Services. The method and means of providing such Emergency Dispatch Services shall be determined by Pomfret, following consultation and discussion with the fire chief, and may be provided by a subcontractor.

- (A) If the Department has problems or difficulties with the Emergency Dispatch Services provided for Pomfret, such problems or difficulties shall be brought to the attention of the Select Board by the Department. The Select Board will investigate such problems or difficulties, select the most appropriate way to attempt to resolve such problems or difficulties, and shall work on behalf of the Department to resolve such problem or difficulty.

#### **Section 2.5 Hydrants**

- (A) The Department shall be responsible for recommending the placement of new hydrants.
- (B) The Department shall be responsible for pursuing grants to fund the construction and installation of new hydrants.
- (C) The Department shall be responsible for testing hydrants within its Service Area to ensure they are operating correctly.

#### **Section 2.6 Mutual Aid Agreements**

By this Agreement the Department is authorized to enter into a mutual aid fire protection agreement with other duly authorized fire departments, whether municipal, private or volunteer, wherever and whenever appropriate. Pomfret shall not limit the decision of the Fire Chief to provide mutual aid and assistance when requested from other departments outside of Pomfret.

### **ARTICLE III OPERATING FUNDS**

#### **Section 3.1 Annual Budget; Operating & Capital Expenditures**

- (A) On or before November 1st of each year, the Department shall prepare and submit to the Select Board the following:
  - (i) A reconciled financial statement representing the most recently completed fiscal year, prepared in accordance with Generally Accepted Accounting Principles (GAAP), showing all assets, liabilities, income and expenditures of the Department;
  - (ii) The current fiscal year's budget and actual expenses to date;
  - (iii) The projected budget for the next fiscal year;
  - (iv) The previous year's fundraising report, detailing all monetary or in-kind donations received by the Fire Department, as well as details of actual and planned expenditures of fundraising dollars;

- (v) An inventory of equipment, including vehicles, paid for in full or in part with taxpayer money. The inventory shall include: (a) serial or other identification number (for vehicles, the Vehicle Identification Number), (b) manufacturer and model number, (c) description, (d) year purchased, (e) year placed into service, and (f) if applicable, to whom with the Department the equipment is assigned;
  - (vi) A written funding request for Operating Funds, representing the amount the Department wishes Voters to raise in taxes for annual operating costs for the next fiscal year; and
  - (vii) As capital expenditures become necessary, the Department shall submit a written spending request to the Select Board. Requests for capital expenditures must include submission of a capital plan drafted and approved by the Department. Capital spending requests must also include the amount of private money set aside by the Department for requested capital expenditures.
- (B) The Select Board shall review the Department's Operating Funds request, and, when submitted, capital spending requests. The Select Board shall submit its feedback and recommendation to the Department no later than 15 calendar days from the time of the Department's submission(s). In the event that the Department disagrees with the Select Board's recommendation, both the Department and Select Board shall meet and resolve any disagreements within 15 calendar days of the Select Board's recommendation to the Department. Once resolved, the Select Board will draft an article for Operating Funds to be placed on the warning for the next annual Town Meeting as a separately warned article.

### **Section 3.2 Annual Appropriation**

If the Annual Appropriation for the Department's Operating Funds is approved by Voters at the Annual Town Meeting, disbursement shall be made in four equal payments, the first payment made after taxes have been received in the first quarter and thereafter at the beginning of each fiscal quarter.

## **ARTICLE IV REPORTING**

### **Section 4.1 Fire Services Evaluation Report**

Within 60 calendar days of the date this Agreement is signed by both parties, the Department and Pomfret shall jointly agree on and adopt recommendations from among those made in the 2016 "Fire Services Evaluation for the Pomfret-Teago Volunteer Fire Department" report (also known as the "John Wood" report) at a duly warned Special or Regular Select Board meeting.

### **Section 4.2 Recurring Reporting Requirements**

Twice per annum, the Department shall report the following information to the Select Board: (1) The number and nature of calls responded to by the Department, the number of firefighters who responded, and broken down by station, (2) the status of hose and pump equipment testing, (3) the status of training, including firefighter certification, (3) active personnel levels at each station. The first reporting period shall be from July 1st to December 31st with report information due on January 31st of the following year. The second reporting period shall be from January 1st to June 30<sup>th</sup> with report information due on July 31st. Additionally, the Department shall make

available both electronic and paper versions its current Standard Operating Procedures (SOP's) to be kept on file the Town Offices.

## **ARTICLE V MAINTENANCE OF EQUIPMENT & TITLE TO PROPERTY**

### **Section 5.1 Maintenance of Vehicles, Apparatus and Equipment**

The Department is responsible for performing or ensuring routine preventative maintenance and break-fix maintenance for all vehicles and equipment. As part of its projected fiscal budget, The Department shall include anticipated maintenance costs. In the event of major unplanned maintenance or repair costs not included in the Department's budget, and not covered by an insurance policy, the Department may submit a request to the Select Board to use money from an applicable Reserve Fund.

### **Section 5.2 Property Title**

Title to vehicles, apparatus or other equipment acquired in whole or in part with taxpayer money shall be in the name of the Department.

## **ARTICLE VI INSURANCE**

### **Section 6.1 Liability Insurance**

Pomfret will provide the Department with liability insurance coverage, subject to the provisions of Section 6.5. Such coverage shall include the Department owned real property or buildings. The carrier and amount of coverage shall be at the sole discretion of Pomfret.

### **Section 6.2 Casualty Insurance**

Pomfret will provide the Department with casualty insurance coverage, subject to the provisions of Section 6.5. Such coverage shall include the Department owned real property or buildings. The carrier and amount of coverage shall be at the sole discretion of Pomfret.

### **Section 6.3 Workers' Compensation Insurance**

Pomfret will provide the Department with workers' compensation insurance coverage, subject to the provisions of Section 6.5. The carrier and amount of coverage shall be at the sole discretion of Pomfret.

### **Section 6.4 Vehicle Insurance**

Pomfret will provide the Department with motor vehicle insurance coverage for all vehicles and apparatus currently owned by the Department, and all vehicles and apparatus purchased in the future with Pomfret Funds, subject to the provisions of Section 6.5. The carrier and amount of coverage shall be at the sole discretion of Pomfret.

### **Section 6.5 Limitation of Insurance**

Pomfret shall only be obligated to provide the insurance coverage set forth in Sections 6.1-6.4 if the following conditions are satisfied:

- (A) The Department must allow representatives and agents of the insurance carriers access to all property and records of the Department that such insurance carriers reasonably request; and

- (B) The Department must take any and all actions, and comply fully with any and all changes in policy, procedure, property or equipment that are required by any insurance carrier as a condition of continued coverage.

If the Department fails to comply with the above provisions, Pomfret may choose to discontinue insurance coverage. In the event Pomfret exercises the right to discontinue insurance coverage, the Department shall be responsible for obtaining such insurance coverage and shall indemnify and hold harmless Pomfret for any claim that may be asserted against it that otherwise would have been covered by such insurance provided by Pomfret. The Department is responsible for obtaining and paying for insurance it wishes to have over and above the coverage provided by Pomfret.

#### **Section 6.6 Insurance Forms and Information**

The insurance obtained for the Department and the binder provided by the insurance agent delivered to Pomfret will be made available to the Department, including all pertinent information regarding such insurance coverage and all necessary forms for obtaining the benefits thereof. Pomfret will provide Proof of Insurance and Declarations Pages to the Department.

### **ARTICLE VII GENERAL PROVISIONS**

#### **Section 7.1 Dissolution of the Department**

Upon dissolution of the Department, or otherwise cessation of regular operations, ownership of Department-owned assets purchased in whole or in part with Pomfret Funds shall be transferred to Pomfret. All other assets purchased solely by the Department shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government for a public purpose. Any such assets not so disposed of shall be disposed by a court of competent jurisdiction of the county in which the principal office of the Department is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

#### **Section 7.2 Assignability**

This Agreement shall not be assignable, in whole or in part, by the Department without the Select Board's written approval.

#### **Section 7.3 Term & Amendment**

The term of this Agreement shall be for 5 years from the date both parties have signed the Agreement. As the need arises, this agreement may be amended by consent and ratification of both parties. A party initiating amendment must make written notification of and describe the desired changes no later than October 1<sup>st</sup> of each year. Amendments to this Agreement must be ratified by both parties before December 1<sup>st</sup> of each year.

**Section 7.4 Termination**

Either party may terminate this Agreement without cause between July 1<sup>st</sup> and November 30<sup>th</sup>. Termination will not impact the current fiscal year in progress. Termination must be made in writing to the other party with at least 60 days notice and must include an explanation for unilateral termination.

**Section 7.5 Hold Harmless**

The Department shall defend, indemnify and hold Pomfret, its officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Department in performance of this Agreement, except for injuries and damages caused by the sole gross negligence of Pomfret.

**Section 7.6 Entire Agreement**

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the parties to this Agreement with respect to the subject matter hereof. Neither party makes any representation or warranty with regard to the subject matter of the Agreement other than those expressly set forth herein.

Dated at town of Pomfret, Vermont, this \_\_\_\_ day of \_\_\_\_, 2017.

Pomfret Select Board:

Pomfret – Teago Fire Department

This Agreement is entered with the official approval of the Select Board for the Town of Pomfret, Vermont, by their action during a duly warned public meeting on the \_\_\_\_ day of \_\_\_\_, 2017.