

**Town of Fairview  
Special Meeting  
May 22, 2013**

The following Council members were present: Mayor Elizabeth Long, Jerry Clontz, Arnold Price and B.B. Haigler. Bradley Purser was not present.

Others present: Joe McCollum, Town Attorney and Ed Humphries, Land Use Administrator / Town Clerk

The purpose of the Special Meeting is:

\*\*\* To discuss the agreement with the Fire Department (Draft 2 And Draft 3)

with possible action. ---*Jerry Clontz*

\*\*\* To discuss the Park and bids for clearing in the park and around the pond.

with possible action. ---*BB Haigler*

Jerry Clontz reviewed the Committee's second draft between the Fire Department and the Town. Jerry also discussed the third draft the Fire Department Board reviewed and changed. The Council discussed how they would like to see the document.

Joe McCollum stated he had a few questions:

- Is the building to be built on Town property?
- Resolution to spend so much money; the maximum amount
- Explain agreement with County
- What if the State makes changes and Fairview or the Fire Department cannot fulfill the contract?
- What if the Town loses charter?
- Insurance that covers the Town; could be listed with an amount
- Repairs to building; need to better explain
- Future contributions from the Town will be voluntary

Mayor Long had a question regarding a person serving on both boards.

It was agreed that the Town wanted a ten year agreement.

Below is a copy of the agreement with the comment from the Council in **BOLD**

## Fairview Fire and Rescue

This Operating and Services Agreement (“Agreement”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_ 2013, (the “Effective Date”) by and between the Town of Fairview, North Carolina, a North Carolina Municipal Corporation (hereafter “Town”) and Fairview Fire and Rescue Inc. (hereafter “Fire Department”).

### RECITALS

1. Town is a municipal corporation organized under the laws of the State of North Carolina, with authority to provide essential services, including fire protection services, to its citizens.
2. The Fire Department is a North Carolina non-profit corporation consisting of members who provide fire protection and other emergency services.
3. Fire Department has been providing fire protection services to the Town and to areas outside of the Town limits. Town and Fire Department have previously entered into a Services Agreement, dated as of \_\_\_\_\_,
4. It is contemplated that Town may construct future fire stations, both as additional stations or as a replacement for an existing station.
5. Town has been providing funding to Fire Department to provide services within the Town. Fire Department has also received direct funding from Union County (“County”) to assist in providing fire protection service to unincorporated areas within its fire district, Fire Fee Revenue, and the addition to such private funding that Fire Department has raised.
6. Town and Fire Department wish to enter into this Agreement for the purpose of providing the terms by which Fire Department shall provide fire protection and emergency services to the Town and to the District and the utilization and terms of the Town owned fire station by the Fire Department.

**Add: Town has committed to provide \$1.2 million for the construction of a new fire station building and will provide the property to construct the building on property already owned.**

## AGREEMENT

1. Agreement. Pursuant to the terms of this Agreement and for the duration herein set forth, Fire Department will provide fire protection, rescue and emergency services as the primary provider to the Town, as it presently exist, or as the city limits may extend from time to time, and to the District (except such unincorporated areas of the District that may presently be served by other departments, so long as that other service continues).

2. Term. This Agreement shall be for a period of fifteen (15) years, beginning on the Effective Date, with an option to renew on the part of either party; provided, further, that on the thirteenth anniversary of the Effective Date, Town shall have the option to cancel this Agreement, with qualifications of cause, upon giving of two (2) year notice of the exercise of the option to cancel.

**Town: up to 10 years with option to renew without penalty or cause with (1) one year notice**

3. Possession. Throughout the term of this Agreement, except as otherwise provided herein, Fire Department shall be the user of the fire station. Such right of use shall be deemed a contribution of the Town to the Fire Department as to any fire station owned by the Town, either presently or any future fire stations. At such time as this Agreement terminates and Fire Department is no longer the provider of fire protection services to Town, Fire Department shall vacate the Town owned fire stations and return possession to Town within two years.

4. Fire Department Standards. Throughout the term of this Agreement, Fire Department will remain a fully qualified, equipped and staffed fire department, meeting all state and county standards for volunteer fire departments. Without limiting the foregoing generality, Fire Department will meet all of the standards of performance required by the state and Service Agreement, which standards are incorporated herein by reference.

5. Contribution. Annual contributions by Town to Fire Department during the term of this Agreement, in addition to that provided above, shall be determined from time to time by Town, consistent with its established policies of assisting the Fire Department in providing fire protection and related emergency services to the Town. By this Agreement, Town is not obligating itself or future Boards of Commissioners of Town as to the level of support given to Fire Department, except as to the right of use of the fire station(s) as set forth herein or as otherwise provided in this Agreement.

6. Cancellation. Notwithstanding the provisions of Paragraph 2 above, Town may at any time, upon giving of two (2) years notice to the Fire Department , cancel this Agreement and regain possession of the Town owned fire station(s), if Fire Department is unable or unwilling to provide the level of service

required by state and county standards or if Town shall decide to establish a fire department as a department of Town, staffed in whole or in part by full time fire fighters and fire chief who are employees of Town. If Fire Department reasonably determines that the level of additional support provided by Town is insufficient to maintain the services and standards of Fire Department as required by this Agreement, considering other sources of income, Fire Department may cancel this Agreement and cease fire protection services to Town upon giving Town two (2) years notice of its intent to cancel. In such event, Fire Department will deliver possession of the Town owned fire stations to Town after two years.

**Town: One (1) year notice Leave in "Fire Dept is unable or unwilling to provide the level of service required"**

**Will deliver possession of the building immediately after ceasing fire protection services**

**May want to combine #1 and #6**

7. Dissolution of Fire Department. Fire Department is a non-profit corporation whose charter provides that upon dissolution the assets must be distributed to a qualified tax exempt organization or to a federal, state or local government. Provided that Town is then providing fire protection services to the Town, and in recognition of the funding provided by Town to Fire Department, Fire Department agrees that upon dissolution, Fire Department's remaining assets shall be distributed to Town to be used exclusively for fire protection and emergency services, unless otherwise prohibited by law.

**Town ok with removing: substantial**

8. Agreement as to Use of Town Owned Station. During the terms of this Agreement, or any mutually agreed upon renewals thereof, the following shall apply:

- a. Fire Department shall be the primary user of all Town owned fire station(s). The Town shall not unreasonably interfere with the Fire Department's use. The Town and Fire Department may jointly authorize other uses from time to time, on a temporary basis, by appropriate agencies or departments of Town or authorized entities, provided that such other usage shall be authorized only after giving adequate advance notice to the Fire Department to enable Fire Department to re-position its equipment or take other appropriate measures so the Fire Departments ability to respond to fires or other emergencies shall not be compromised. Any uses in any area of any fire station other than by Fire Department shall not unreasonably interfere with the operation of the Fire Department.

**Town: Line one add: all town owned stations in the district---line one**

**Leave in: "Secondary town services i.e. establishment of a police office or other government function"**

- b. Fire Department shall be responsible for keeping the premises in a clean and sanitary condition, except that when uses other than that by the Fire Department are authorized, the using entity shall be responsible for such cleaning and maintenance, to the reasonable satisfaction of Fire Department.
- c. Fire Department shall be responsible for repairs and maintenance with the areas used by it, including all electrical, plumbing, heating and air conditioning systems, interior walls, windows and doors, and the truck bay doors, up to a maximum of \$5,000.00 total per lease year on Town owned stations. Town shall be responsible for amounts in excess of \$5,000.00 per year and for major structural repairs to exterior walls, roofs, exterior doors and windows, and similar major components on such Town owned stations, unless, in all cases, damage thereto is caused by Fire Department, its agents, future employees, or members while on duty with the Fire Department, in which case Fire Department shall be responsible.

**Town: Leave in “Town shall be responsible for amounts in excess of \$5,000.00 per year and for major structural repairs to exterior walls, roofs, exterior doors (except truck bay doors) and windows, and similar major components on such Town owned stations, unless, in all cases, damage thereto is caused by Fire Department, its agents, employees, or members while on duty with the Fire Department, in which case Fire Department shall be responsible.**

- d. Utilities, such as water, sewer, telephone, alarm monitoring, electric and gas, shall be the responsibility of Fire Department, except to the extent that usage is attributable to users other than Fire Department, and provided further that if said utility is on a Town owned system that does not allocate costs to specific sites (such as telephone at the stations and future sub-station), Town will pay such expense.
- e. Fire Department shall be responsible for keeping all of its equipment secured and for taking whatever steps are deemed appropriate to prevent damage, loss or theft to the equipment while on the premises. Fire Department does hereby hold Town harmless and does release and acquit Town for any loss or damage to Fire Department’s vehicles and equipment, except for the intentional, wanton or willful acts on part of Town, its authorized employees or agents.
- f. Fire Department shall use the fire station solely for the operation of a Fire Station, which term includes uses that are ancillary to the actual operation of a fire station, such as office facilities, training facilities, fund raising and similar uses. This provision shall not be interpreted as precluding other Town uses as set forth in 8(a) above. Any use by or authorized by the Fire Department which is not directly related to the operation of the fire station or of Fire Department’s mission of providing fire protection must have the prior approval of Town, which may be given by Town Council.
- g. Fire Department shall make no changes to the exterior appearance of any Town owned station or make interior modifications without express written consent of Town.

9. Independent Agency. Fire Department is a separate, independent corporation and is not an agency of the Town. Town shall have no control over the operation of the Fire Department, so long as Fire Department is providing the services and fulfilling the responsibilities set forth in this Agreement. Town shall not direct the operation, control or training of the members or future employees of the Fire Department, approve or disapprove of the purchase of equipment (except as a result of a direct funding request), approve or disapprove of the membership or in other manner supervise any element of control over Fire Department. Fire Department does agree that it shall not discriminate in its membership or future employment because of race, religion, color, sex, age, disability or national origin, provided, however, that members and employees must be competent and capable of performing the requirements of the job. Fire Department shall be responsible for maintaining all records and paying all future wages and benefits of paid employees of Fire Department. Fire Department shall be solely responsible for determining that the work conditions comply with all health and safety regulations and shall be responsible for filing any necessary reports or documents relative thereto. Town assumes no responsibility for any violation of any Occupation, Health & Safety Act (OHSA) or any other similar State or Federal Act.

**Add: Volunteer to Fire Department**

10. Insurance. Fire Department shall be responsible for obtaining and maintaining all appropriate and required insurance, specifically including the insurance requirements under the County Agreement. Such insurance may, if available to Fire Department, be maintained through Town by virtue of Town's membership in any type of inter-local risk management agreement. Fire Department will be responsible for all workers' compensation and other similar obligations. Fire Department will obtain special event insurance for those occasions, such as fund raising dinners, when Fire Department coverage does not cover liability at such events. Town shall provide structural building insurance to cover all major components of such building including HVAC, electrical and generator.

11. Financial Statements. Fire Department will, as a matter of information, provide Town with its annual financial statement and independent audit, showing sources of all income, including contributions from Town and the nature of all such expenditures within 30 days of completion. Town shall not have any right of approval or disapproval of the statement. Any additional audits will be at the expense of the requesting party.

12. Equipment. All vehicles and equipment of the Fire Department shall be titled in the name of the Fire Department and shall not be titled in the name of the Town, even though contribution or payments from Town may have been used to acquire or finance the acquisition of such equipment.

13. Mutually Agreed Upon Renewal. As set forth in Paragraph 2 of this Agreement, this Agreement shall be for a maximum of fifteen (15) years and there is no option to renew this Agreement. Nevertheless, if neither party gives notice to the other at least ninety (90) days prior to the final termination date of this Agreement, such non-action shall be deemed a mutually agreed upon renewal of this Agreement for an additional fifteen (15) year period on the same terms and conditions as are herein set forth, and specifically including the right of Town to terminate the Agreement, with cause, on a date which is thirteen (13) years from date of the beginning of such renewal. Notice of the intent of

either party to complete the termination at the end of such term shall be given in writing at least ninety (90) days prior to that time. A mutually agreed upon renewal shall be deemed to occur at the end of each subsequent fifteen (15) year period, unless notice is given by either party. At no time, however, shall this extension be deemed to abrogate the rights herein given by either party to earlier terminate the Agreement for any of the reasons set forth.

**Town: Ten (10) years and ninth year**

14. This agreement can be amended as needed anytime during its term with mutual agreement of both parties

15. Tax Free Status. It is the intent that the Agreement at all times complies with the provision of any Revenue Ruling or Proceeding in order to maintain a tax free status of the funds used to finance the construction of any Town owned fire station, or any replacement to that financing. If any condition exists or arises which may cause this Agreement to be in violation thereof and is not promptly corrected, then this Agreement may be deemed void and the rights between the parties cease. Fire Department specifically agrees that there shall be no overlapping Board members in numbers precluded by Revenue Procedure 93-19 or successor procedure, nor any prohibited overlapping on the Board of either party or Chief Executive Officers of either party. Build shall be built to applicable state and county fire department standards.

**Town ok with shall be built**

***IN WITNESS WHEREOF***, Town and Fire Department have executed this Agreement after approval of its respective governing bodies, as of the Effective Date.

Jerry Clontz gave a report from the Park and Recreation Committee where they have prioritized the items they would like to see completed first.

First Project – Clear and clean out wooded area  
Second Project – Clean out pong

Jerry Clontz provided information regarding a quote he received from Garcia Forest Service; two phases – spray and clear for \$5,875.

B.B. Haigler had two quotes; Kelly Trucking for approximately \$10,000 and Fence Road Grading for \$1,100.

Jerry Clontz was to obtain more information regarding the Garcia bid and place it on the June Agenda for approval.

Ed Humphries explained the permit process for cleaning the pond. Humphries suggested the Town contract with CWS (Carolina Wetlands) to obtain the proper permits.

B.B. Haigler made a motion to approve the contract with CWS in the amount of \$3,070.  
Copy of contract Attached: Exhibit A attached.

Jerry Clontz seconded the motion. Councilmen Clontz, Haigler and Price voted yes (3-0).

The meeting was adjourned by Mayor Long.

Respectfully submitted,

---

Ed Humphries  
Town Clerk

---

Elizabeth Long  
Mayor

**Approved this 10th day of June, 2013.**