

AGREEMENT FOR THE PROVISION OF FIRE PROTECTION SERVICES

THIS AGREEMENT FOR SERVICES (“Agreement”), effective [redacted], 2011 is made and entered by and between the City of Granite Shoals, Texas (“City”) and [Name of Subdivision/HOA] (“Owner”), in consideration of the undertakings of the parties under this agreement.

Article I - Purpose

The purpose of this Agreement is to set forth the terms upon which the City shall provide to Owner fire protection services, first response services and rescue services that are the same or similar to the services that the City of Granite Shoals Fire Department provides to the City’s residents inside the city limits. It is the City’s policy not to solicit customers for the provision of such Services. Consistent with this policy, Owner has requested voluntarily that the City provide Services, and the City is amenable to providing such services in the manner and upon the terms provided in this Agreement.

Article II - Rights and Obligations of Parties

Section 2.01 – Property Covered by this Agreement.

The City will provide Services for real and personal property of Owner at [address], more particularly described as follows: [describe], (“Property”) the property being outside the city limits.

Section 2.02 – Term; Annual Fee.

A. The fire protection will begin at 12:00 a.m., on October 1, 2011, and continue for one year at an annual fee of \$[dollar amount]. This value for the initial year’s annual fee is based on the total tax assessed value of the Property at a rate of \$.05 per hundred dollars of valuation. Payments shall be made as follows: equal quarterly payments with the first quarterly payment due on initiation or the total value paid on initiation.

B. The payment may not be refunded, but the property shall be protected for one year regardless of change in its ownership.

Section 2.03 –Services Provided

A. The sole discretion will rest with the Fire Chief or his designee as to the firefighters and equipment that will answer each alarm, provided that protection will reasonable protection, considering available firefighters and equipment of the city fire department.

B. The parties acknowledge and agree that the services to be provided by the City under this Agreement are based solely on currently existing levels of service demands, public convenience, and existing needs and necessity of the residents of the City of Granite Shoals and

the residents of the Owner, and that if such levels of demand should change in the future, amendments to this Agreement may be required.

C. For purposes of this Agreement, the term “Services” shall be defined as follows:

1. Firefighting (Structure, Vehicle, and Wild-land)
2. First Responder (First Aid & CPR only). No EMS transport to Hospitals.
3. Hazardous-Materials Mitigation (First Response Only). Hazardous-Materials Clean up costs are not covered under the terms of the Agreement.
4. Rescues of Persons (Vehicle Extrication, Building Extrication, Water, High angle, and Land Rescues).
5. Service Calls (Smoke investigation, parades, Public Education, Fire/Dry Hydrant inspections, Fire Safety Inspections).
6. Monthly Report of Activities will be provided at the request of the Owner.

D. Sending of firefighters and equipment to protect property of Owner will subordinate to requests for fire protection within the city limits.

Section 2.04 – Owner’s Responsibilities

A. The Owner will provide the Granite Shoals Fire Department with a current map of their response area with all known streets labeled. This map shall include any known water sources (ie, Hydrants, Lakes, Stock ponds, swimming pools) within their district.

B. Roadways should be all weather type roads for fire department use and trees and foliage should be trimmed to prevent Fire apparatus damage (Min 11 ft.).

C. Maintain and repair of their current water delivery systems for Fire Department use.

D. Access gates shall be outfitted with a KNOX entry system to allow for fire department entry.

E. Encourage all property owners within the area described by the Agreement to obtain a burn permit from the Granite Shoals Fire Department prior to any burning of Brush, grass or tree piles. TCEQ Outdoor burning rules 30 TAC 111.201-221 shall apply.

Section 2.05 – Limitation of Liability.

A. The City provides the Services “as is,” that is, the services will be provided in the manner in which, and according to the practices and procedures by which, the City provides such services for itself, and the City makes no warranties or representations that such services will have any particular quality or adequacy for the needs of the Owner.

B. The Owner assumes full risk and responsibility for any claims, damages, costs, penalties, fines and expenses, including attorneys' fees, for injury to or death of any person and for damages to or loss of property arising in whole or part, directly or indirectly, as a result of this Agreement or the provision of the Services hereunder. Provided, however, that nothing in this paragraph should be construed to create an independent basis for liability on the part of the Owner to any third party not a party to this Agreement.

C. The City shall have no liability of any kind to the Owner for or arising from the provision of the Services. The Owner's sole remedy under this Agreement shall be termination of this Agreement.

D. Nothing in this Agreement is intended to or shall have the effect of adding to or changing the liability limits and immunities for a governmental unit provided by the Texas Tort Claims Act, Texas Civil Practice and Remedies Code chapter 101, or other applicable law.

E. The Owner agrees to indemnify and hold harmless the City, including its officers, employees, agents and representatives, from and against any and all third party claims of any kind arising from or related to the Services performed on behalf of the Owner, and for the defense or settlement thereof, including, without limitation, costs of court, awards of damages, fines or penalties, reasonable attorneys fees and other costs of defense or of settlement, attempted settlement or alternative dispute resolution.

F. Owner understands and agrees that individual property owners may be subject to a charge per call based on the fee structures shown in Attachment A (Fire Department Fee List) if the incident or emergency resulted from carelessness or is deemed to be a result of violation of local, state or federal law.

Article III – Miscellaneous

Section 3.01 – Governing Law.

This Agreement shall be governed by the laws of the State of Texas and the Charter and ordinances of the City of Granite Shoals.

Section 3.02 – Venue.

Venue for any actions arising from or related to this Agreement shall be and lie exclusively in the state and county courts of Burnet County, or in the United States District Court for the Western District of Texas, Austin Division.

Section 3.03 – Force Majeure.

If either party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, other than an obligation to pay or provide money, then such obligations of that party to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period.

Such cause, as far as possible, shall be remedied with all reasonable diligence. The term “force majeure,” as used herein, shall mean: acts of God; acts of the public enemy, or war; orders of any kind of any governmental entity or any civil or military authority; acts, orders or delays thereof of any regulatory authorities with jurisdiction over the parties; insurrections, riots, civil disturbances, explosions, or epidemics; arrests or restraints of government and people; strikes, lockouts, or other industrial disturbances; landslides, lightning, earthquakes, fires, hurricanes, tsunamis, tornadoes, ice ages, floods, washouts, droughts, or other acts of Nature; breakage of, damage to, or accidents involving necessary machinery or other infrastructure; interruption or other limitation of fuel or other necessary supplies or utilities or utility services; or any other conditions that are not within the reasonable control of the party claiming force majeure.

Section 3.04 – Duplicate original counterparts.

This Agreement may be executed in duplicate original copies by the parties.

Section 3.05 – No third party beneficiaries.

This Agreement is not intended to and does not create rights or remedies in favor of any third parties.

Section 3.06 – Complete agreement; amendment in writing.

This Agreement is the sole agreement between the parties concerning the subject matter hereof, and supersedes any and all prior understandings, agreements, representations or undertakings between the parties concerning that subject matter. This Agreement may be amended or modified only in writing duly executed by both parties. No official, employee, agent or representative of either party has the authority to amend or modify this Agreement without the official approval of that party’s governing body.

Section 3.07 –No exclusivity.

This Agreement does not create any exclusive rights in the Owner regarding the City’s provision of the Services; and the City may provide such services to other entities as may be permitted by law.

Section 3.08 –No assignment.

This Agreement is not assignable in whole or part by either party without the express written consent of the other; provided, however, that the City may contract with third parties in its sole discretion to assist the City to provide the Services hereunder.

Section 3.09 –Non-waiver.

Any act of forbearance by either party will not constitute and will not have the effect of an amendment of this Agreement. The failure of either party to exercise any right under this

Agreement under certain circumstances does not imply a waiver of such right under like circumstances later occurring.

Section 3.10 –Notice.

Any notice required to be given under this Agreement by one party to the other must be in writing, and is deemed to have been given (i) immediately if delivered in person to, or (ii) within three business days after the mailing of the notice if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, and addressed to: the person named below at the address specified below (or to such person at such address as the party being notified has from time to time designated in writing to the notifying party).

For notice to the City: Mayor, City of Granite Shoals
2221 North Phillips Ranch Road
Granite Shoals, Texas 78564

For notice to the Owner: _____

Section 3.10 –Severability.

If any part of this Agreement is held unenforceable by a court of competent jurisdiction and authority, the remainder of the Agreement shall be construed as if that portion held unenforceable were not part of the Agreement, and effect shall be given to the remainder of the Agreement to the extent possible without internal contradictions created by such severance.

Section 3.11 – Authority to Enter Into Agreement.

The Owner expressly warrants that the person signing this Agreement is fully authorized and legally competent to execute this Agreement on the Owner’s behalf.

In Witness Whereof the parties hereto have duly executed this Agreement this _____ day of _____, 2011.

OWNER:

CITY:

[NAME OF OWNER]

CITY OF GRANITE SHOALS, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____