

FIRE DEPARTMENT SERVICES AGREEMENT

between
The Village of Ottawa Hills
and
The City of Toledo

This Agreement, which incorporates by reference Exhibit A, is made and entered into by and between the City of Toledo, a municipal corporation of the State of Ohio (hereinafter referred to as "Toledo") and The Village of Ottawa Hills, a municipal corporation of the State of Ohio (hereinafter referred to as "VOH").

WITNESSETH:

WHEREAS, in accordance with ORC Section 9.60, both parties have the authority to provide fire protection, emergency medical services, hazardous materials response, and emergency preparedness services ("Fire Department Services") within their respective corporate boundaries; and

WHEREAS, Toledo has established and maintains a nationally accredited, well-trained and highly qualified fire department, and is capable of extending the provision of Fire Department Services to the geographical area of VOH; and

WHEREAS, Toledo currently provides Fire Department Services to VOH under an Agreement and Lease having a commencement date of January 1, 2011 ("Original Agreement and Lease") as subsequently temporarily modified by a Memorandum of Understanding, as amended, that terminates on September 31, 2019; and

WHEREAS, the parties are desirous of continuing to enable VOH to utilize Toledo's Fire Department Services in the Village of Ottawa Hills, and thereby avoid unnecessary duplication of effort and expenditures of public funds; and

WHEREAS, parties agree that it is in the best interests of the parties and the delivery of fire services in an responsive, efficient and cost effective manner that certain provisions of the Agreement and Lease be adjusted, that the Lease be terminated, and that the parties enter into a new agreement to supersede and replace the Agreement and Lease; and

WHEREAS, substantial investigation and negotiation have occurred in an effort to evaluate the effectiveness of service delivery to VOH from fire stations within the city of Toledo and to determine a service fee which is equitable to both parties; and

WHEREAS, the service fee established for VOH and the method by which future service fees will be determined, as described herein, are acknowledged by both parties to be fair and equitable;

WHEREAS, the Council for Toledo has authorized this Agreement with the passage of Ordinance ____-19, and the Council for VOH has authorized this Agreement with the passage of Resolution _____-19;

NOW, THEREFORE, the parties hereto agree as follows:

1. **Engagement, Original Agreement and Lease Superseded.** VOH hereby engages Toledo to provide Fire Department Services and Toledo hereby agrees to provide such services in and for the benefit of the Village of Ottawa Hills and its occupants during the term of this Agreement as provided herein.

By the mutual agreement of the parties, the Original Agreement and Lease between Toledo and VOH, which had a commencement date of January 1, 2011, is wholly superseded and replaced by this Agreement as of the Commencement Date as stated in section 11 herein. Further, the Lease as executed by a separate document and incorporated into the Original Agreement and Lease is hereby terminated as of the Commencement Date of this Agreement

and neither party shall have any rights or further obligation to the other party thereunder, except (a) as provided in section 17 of the Original Agreement and Lease and (b) that VOH agrees that its obligation to maintain insurance under section 11 of the Original Agreement and Lease shall survive for a period of two (2) years following the Commencement Date of this Agreement.

2. **Nature and Scope of Services.** Toledo agrees to provide services which meet standards for accreditation consistent with nationally accredited Fire Departments in the Village of Ottawa Hills at substantially the same levels as those services are provided within the geographical boundaries of the City of Toledo. Services to be provided and standards for those services are specified in Exhibit A. Toledo agrees to devote professionally trained personnel and resources sufficient to perform such services and to meet the need for Fire Department Services in the Village of Ottawa Hills. Toledo also agrees that the services provided will be of kind and quality consistent with what can be reasonably expected from a modern and professional fire department operating in a municipality comparable in size to Toledo. Toledo shall be the employer of all personnel performing Fire Department Services pursuant to this Agreement.

3. **Discretion Regarding Manner of Providing Services.** Subject to the terms of this Agreement, Toledo shall have discretion to select the personnel and equipment that will respond to each call for fire protection, emergency medical services, hazardous materials response, or emergency preparedness services covered by this Agreement. Toledo shall also have discretion as to the order of response to calls, and shall be the sole judge as to the most expeditious, efficient and effective manner of handling and responding to calls for service or the rendering thereof.

4. **Payment for Services.** In consideration of Toledo's performance of this Agreement, VOH agrees to pay an annual fee to Toledo (the "Annual Service Fee") for each 12- month period of service provided by Toledo under this Agreement. The Annual Service Fee shall be payable in the following installments: one-quarter (1/4) on or before March 15 of each Service Year; one-quarter (1/4) on or before June 15 of each Service Year; one-quarter (1/4) on or before September 15 of each Service Year; and one-quarter (1/4) on or before December 15 of each Service Year. "Service Year," as used herein, refers to a 12-month calendar year period beginning on January 1 of each full year of the term of the Agreement. In addition to the Annual Service Fee, VOH agrees to pay to Toledo a Service Payment amount for the period beginning with the Commencement Date of October 1, 2019 through December 31, 2019 of one-quarter of the Base Charge as specified below, which shall be payable on or before December 31, 2019.

5. **Base Charge.** The Annual Service Fee for the first three (3) Service Years is \$300,000.00 per year (the "Base Charge"). On the first of January following the third anniversary of the Commencement Date and then every five years thereafter (the "Adjustment Dates"), the Annual Service Fee shall be adjusted to reflect changes in the Consumer Price Index ("CPI"), such changes to be made in the manner described in paragraph 6 of this Agreement. The Adjustment Dates are January 1, 2023, January 1, 2028 and January 1, 2033. In the event the Agreement is extended as provided in Section 11, there will be an additional Adjustment Date on January 1, 2038.

6. **CPI Adjustment.** The amount of any adjustment to reflect changes in the Consumer CPI shall be determined by agreement of the parties, if possible. If the parties are unable to reach such agreement, the adjustment shall be determined by multiplying the Base

Charge in effect for the period immediately prior to the adjustment by the percentage that the CPI has changed during the period in which such Base Charge was in effect. Adjustments shall reflect changes in the CPI for the period ending 30-days prior to the date on which the change is to be effective and the Annual Service Fee, as adjusted, shall remain in effect until the next Adjustment Date. The term "Consumer Price Index" as used herein means the Consumer Price Index for All Urban Consumers, U.S. City Average for all Items published by of the United States Bureau of Labor Statistics.¹

7. **Transportation and Other Service Charges.** Toledo shall not charge non-resident rates to residents of the VOH for transportation services or any other services provided by the Toledo Fire Department. Residents of the VOH shall be subject to the same service charges for transportation and other Fire Department services as residents of Toledo in accordance with applicable City of Toledo Ordinances, now in effect or as may be hereafter adopted.

8. **Inspection of Hydrants and Water Supply.** Either party may conduct any necessary inspections of fire hydrants and water supply to hydrants. The VOH acknowledges and agrees that personnel of the Toledo Department of Public Utilities may conduct inspections of hydrant issues within the VOH as may be required.

¹ The following method illustrates the computation of the change:

CPI for current period	136.0
Less CPI for previous period	129.9
Equals index point change	6.1
Divided by previous period CPI	129.9
Equals	0.047
Result multiplied by 100	0.047 x 100
Equals percent change	4.7

9. **Maps.** The VOH shall furnish the Toledo Fire Department with a proper chart or map showing all roads and hydrants, and shall keep such map reasonably up-to-date as changes and alterations are made.

10. **Map Change Notification.** The VOH agrees to notify the Toledo Fire Department by telephone and in writing in the event that VOH shall make any changes in the road or street network within the VOH (including temporarily or permanently closing any road or street to vehicular traffic) that could reasonably be considered to materially affect the provision of Fire Department Services within VOH or shall become aware of any substantial changes or interruptions in water service to any area within the VOH.

11. **Contract Term and Renewal.** The initial term of this Agreement shall be from October 1, 2019 (the "Commencement Date") through December 31, 2035. If the parties so agree in writing prior to December 31, 2035, the term of this Agreement may be extended for an additional five (5) years, to December 31, 2040.

12. **Termination.** This Agreement may not be terminated prior to its expiration except upon (a) a mutual written agreement of the parties, or (b) a declaration issued by the Court of Common Pleas of Lucas County, Ohio terminating this Agreement for Just Cause, (c) notice provided by either party that the agreement would be terminated at a specified adjustment date referenced in paragraph 5. "Just Cause," as used herein, shall include a serious, material, and continuing failure on the part of a party to meet its obligations under this Agreement as the result of which it is dangerous or manifestly unfair to continue it. Due to public safety and other considerations, no termination of this Agreement shall take effect less than three years after the determination or announcement of its termination, unless the

Court of Common Pleas determines that emergency circumstances justify a sooner termination date.

13. **No Delegation or Assignment.** No delegation of duties and no assignment or other transfer of any right or obligation under this Agreement shall be made by either party. Any attempt to so delegate a duty or to assign or transfer any such right or obligation shall be a breach of this Agreement and of no effect.

14. **Liability.** In the event of liability for damages arising out of bodily injury or death to persons or damage to property caused by or resulting from the concurrent negligence of both parties, each party's liability hereunder shall be proportionate to the extent of each party's negligence.

Toledo and VOH each agree that its respective obligation under this section extends to any claim, demand or cause of action brought by or on behalf of any of its employees.

The provisions of this section shall survive the expiration of this Agreement.

15. **Dispute Resolution.** Except as to matters related to termination and submitted to the Court of Common Pleas under paragraph 12 of this Agreement, any claim or controversy arising out of or pertaining to the performance of obligations under this Agreement which cannot be settled by the parties shall be resolved by the procedure set forth in Section 16 and, where applicable, Section 17 of this Agreement.

16. **Demand.** Either party may at any time make a written demand for dispute resolution (a "Demand"). The Demand shall make reference to this Agreement and shall be served upon the office of the Mayor and the Village Solicitor or the City Law Director (or comparable legal representative for the Village or the City). Within two days after receipt of such a Demand, the Mayors of each party shall appoint a representative and the two

representatives so appointed shall promptly meet and resolve the issue by agreement. If the representatives are unable to reach agreement within twenty-four hours of their appointment, the two representatives shall appoint a third, disinterested representative (the "Neutral") who shall resolve the disputed issue(s). Except as provided in Section 20, the determination of the Neutral shall be conclusive and binding on the parties. Each party shall pay the cost of its own representative. Any cost incurred for the services of the Neutral shall be borne equally by the parties

17. **Challenge of Neutral Determination.** Any determination by a Neutral under Section 19 of this Agreement shall be conclusive and binding on the parties unless a party initiates arbitration to challenge the Neutral's determination within ten days of the date on which the party is notified of the Neutral's determination. Arbitration under this provision shall be conducted in accordance with the rules of the Toledo Bar Association then in effect. Nothing in this provision shall prevent the Court of Common Pleas of Lucas County, Ohio from exercising jurisdiction in a limited purpose of implementing Section 16 of this Agreement.

18. **Entire Agreement.** This Agreement together with Exhibit A, which is hereby incorporated by reference as if fully set forth herein, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by a written instrument properly signed by the duly authorized representatives of both parties hereto.

19. **Notices.** Except as may be otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing and shall be sufficient if hand-

delivered, if sent by registered or certified mail to the last known address of the party to whom such notice is to be given, or if sent by any other reasonable means and its receipt is specifically acknowledged.

For the City of Toledo: To its Director of Law
One Government Center, Suite 2250
Toledo, Ohio 43604

For the Village of Ottawa Hills: To its Solicitor
2125 Richards Road
Toledo, Ohio 43606

20. **Third Parties Unaffected.** This Agreement is intended solely for the benefit of the parties hereto. There is no intent to benefit or to confer any right of action upon any third parties.

21. **Good Faith.** The parties to this Agreement expressly undertake an obligation to act in good faith toward one another in all matters arising under or pursuant to this Agreement.

22. **Governing Law.** This Agreement shall be construed under and in accordance with the laws of the State of Ohio.

23. **Severability.** If any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

24. **Effective Date.** This Agreement will become effective upon execution (the "Effective Date").

25. **IN WITNESS WHEREOF**, the parties acting in their official capacities have hereby executed this Agreement by affixing thereto the signatures of the proper officers on the dates below indicated.

CITY OF TOLEDO

VILLAGE OF OTTAWA HILLS

By: _____
Wade Kapszukiewicz, Mayor

By: _____
Kevin Gilmore, Mayor

Date: _____

Date: _____

Approved as to Form:

Law Department

Village Solicitor

Date: _____

Date: _____

Approved as to Content:

Chief of Fire Operations

Date: _____

EXHIBIT A

Included Services and Service Standards

Services and standards to be provided to the VOH by Toledo as part of Fire Department Services shall include the following:

1. Response Procedures. Toledo will provide response services consistent with NFPA standards and consistent with National Accreditation standards within the VOH limits consistent with existing Toledo response procedures and with such improved procedures that may be initiated from time to time by Toledo in the future.

2. Fire Department Services. The commitment of Toledo is to provide all Fire Department services at the same level as those services are provided in all areas of Toledo and those areas that Toledo services by contract. The Toledo Fire Department is extending its area of Department services. All Department services are provided to VOH whether specifically enumerated in this Agreement or not.

3. Emergency Medical Services. Emergency medical services are provided under the **Lucas County Medical Program Director's** established standards and protocol. Fire Department services are provided under the established written operating standards and procedures of the Department. The closest available vehicles and personnel will be dispatched to VOH service area emergencies.

4. Educational and Community Services. The Toledo Fire Department will also regularly provide fire safety education programs, fire and life safety plan reviews, fire and life safety building inspections and participation in community activities which will include VOH Fun Days, standby at football games, parade services, station tours, fire prevention education in schools, etc. as presently provided to VOH.

5. Reporting. Toledo shall provide VOH with the following reports regarding services provided under this Agreement:

a. By the first working day following a fire or major emergency, Toledo shall provide VOH as requested by VOH, with an oral and written report confirming the time and location of the incident, the cause if known, and the general nature and extent of the loss sustained and/or injuries suffered to the extent permitted by law.

b. On a quarterly basis and within 15 days after the end of each quarter, Toledo shall provide VOH with a written report showing the number and type of service calls for the preceding month, including fire inspection activities, cumulative year-to-date totals, and comparative figures for the prior year. Toledo will attempt to provide this report prior to the first Council meeting of the VOH after the end of each quarter.