

CONTRACT FOR FIRE SERVICES

This Contract (the “Contract”) is made and entered into this 1st day of May, 2023 by and between the Pequot Lakes Fire District, Crow Wing County, Minnesota, (“Fire District”), and the City of Breezy Point, Crow Wing County, Minnesota, (“City”); (collectively the “Parties”).

In consideration of the mutual promises and agreements hereinafter set forth the Parties do hereby agree as follows:

1. **Fire Service.** City agrees to purchase from Fire District, and Fire District agrees to provide **City** fire protection, suppression, prevention, technical rescue and non-transport emergency medical services (the “fire services”).

The fire services are further explained, or limited, as follows:

- a. The Parties understand that the fire department officer in charge of the Fire District at the time of a call or in charge of the particular scene shall exercise judgment to determine, in consideration of all the established policies, guidelines, procedures, and practices, how best to allocate the available resources of the fire district under the circumstances of a given situation.
- b. In responding to fire calls within the service territory described herein, the Fire District officer in charge of the Fire District at the time shall dispatch only such personnel and equipment as in their opinion can be safely spared. In case an emergency arises within the Fire District Service Area while equipment and personnel of the Fire District are engaged in fighting a fire within the **City**, the Fire Chief, or other officer in charge of the Fire District may, at their discretion, recall to the Service Area such equipment and personnel as they may consider necessary to meet the emergency in their sole judgment and discretion.
- c. The Parties understand and agree the Fire District, will endeavor to reasonably provide fire services given the circumstances, but the Fire District makes no guarantees that the fire services it actually provides in a given situation will meet any particular criteria or standard. The Fire District and its officers, employees and volunteers shall not be liable to the **City** or any other person for any injury, loss or damage of any kind whatsoever resulting from the Fire District or its officers, agents, or employees of negligence or failure to furnish any fire services or assistance under this Contract or for recalling assistance.
- d. Road and weather conditions must be such that the fire run can be made with reasonable safety to the firefighters and equipment of the Fire District. In the event that the Fire Chief or other officer in charge of the Fire District at the time makes a decision that the fire run cannot be made with reasonable safety to firefighters and equipment, such decision shall be final. Failure to provide fire services because of poor weather conditions or other conditions, including but not limited to road conditions, beyond the control of the Fire District, shall not be

deemed a breach of this Contract. The judgment of the fire department officer in charge of the particular scene shall be final in all such matters.

- e. Subject to the foregoing, two or more fire calls received from the city officers or from property owners within the service territory described herein shall be answered in the order of receipt, unless the Fire Chief or other officer in charge of the Fire District at that time otherwise directs.

2. **Payments.** In consideration for the fire services extended by the Fire District to **City** under this Contract, **City** shall compensate the Fire District as follows:

- a. **Annual Payment – Lump Sum.** During the term of this Contract, **City** agrees to make payment to the Fire District in the amount of **\$111,252.93** for the 2023-2024 service year (the “Payment Amount”). Such Payment Amount shall be made on or before May 1, 2023.

The annual Payment Amount provided above and as annually adjusted is based on the application of the following formula:

$$S = \frac{U+T}{2} \times C$$

C = Cost of fire department operations in dollars.

S = Each contracting Party's share of total cost expressed in dollars.

T = Building market value of each contracting party expressed as a percent of the sum of the building market value of all contracting parties.

U = Use of fire department services in each contracting Party expressed as a percent of the total use of fire department services by all contracting parties.

U (Use) + T (Building Market Value) is a method of arriving at the percent of costs that should be charged to each contracting party.

To the above formula is added .01 % of the current building market value for Firemen's Relief Association.

- b. **Insurance Proceeds.** **City** will pay to the Fire District all proceeds it receives from the State of Minnesota Fire Aid Insurance payments.
- c. **Contribution to Fireman’s Relief Association.** In addition to the other payments listed in this Contract, **City** will pay **\$16,720.95** annually to the Fireman’s Relief Association so long as this Contract remains in effect.
- d. **Additional Payments.** In addition to the foregoing, **City** shall also pay the Fire District the following:
 - i. \$500.00 for the first hour and \$350.00 for each additional hour or fraction thereof spent by the Fire District on any call.

- ii. \$500.00 for the use of the Hurst extraction tool on rescue calls.
 - iii. \$50.00 per gallon of foam, when the Fire Chief or other officer in charge of the Fire District deems it necessary to use.
 - e. **Levy.** City agrees to levy or otherwise provide funds each year of this Contract in an amount sufficient to pay the Payment amount and such other payments are required by this Contract.
- 3. **Service Territory.** The Fire District shall provide fire services within the corporate limits of City. The identified service area shall constitute City Service Territory (the “service territory”) for the purposes of this Contract. The above service territory designated herein is shown on the map attached hereto and incorporated herein by reference as Appendix A.
 - a. **Notice.** A one-year notice will be given for any changes, deletions, or additions in the service territory being covered under this Contract.
- 4. **Term.** The initial one-year term of this Contract shall commence on May 1, 2023 and terminate on April 30, 2024, unless terminated as provided herein. Written notice of termination must be provided by either Party to the other at least one year prior to expiration of the contract term.
- 5. **Ownership.** The Fire District owns the equipment associated with the fire district and fire services and the amounts paid by City do not give rise to any ownership interest in, or responsibility toward, those items.
- 6. **The Fire Districts’ Responsibilities.** In addition to any other obligations described herein, Fire District shall:
 - a. Authorize and direct the Pequot Lakes Fire District to provide the fire services described herein to Citys’ Service Territory;
 - b. Maintain sufficient staffing to meet the reasonably foreseeable fire service needs of the Fire District and City. The Fire District will pay for all personnel and administrative costs, insurance and training costs. The Fire District retains control of Fire District operations and personnel. Levels of staffing and the numbers of firefighters dispatched to a call shall be determined at the sole discretion of the Fire Districts’ Fire command.
- 7. **City Responsibilities.** In addition to any other obligations described herein, City shall:
 - a. Promptly pay Fire District the Payment Amount and other charges as indicated above for the year of service, or a prorated share of the Payment Amount for the length of service actually provided if the Contract is terminated early;

- b. Promptly disclose to Fire District any information **City** can reasonably anticipate will directly affect its ability to perform its obligations under this Contract.

It is understood and agreed **City** shall have no responsibility whatsoever toward the firefighters or other emergency personnel including any employment related issues such as training, supervision, performance reviews, discipline, compensation, benefits, insurance coverages, compliance with any employment related federal, state, and local laws and rules such as OSHA, ERISA, RLSA, FMLA, or any other employment related issues. It is further agreed **City** has no responsibility, beyond paying the agreed upon Payment Amount and other charges identified above, for acquiring, operating, maintaining, housing, or replacing equipment as needed to provide the fire services described herein.

8. **Insurance Requirements.** Fire District shall maintain commercial general liability insurance for its fire services and shall include **City** as an additional insured for the term of this Contract and any extensions thereof. Fire District shall maintain insurance equal to or greater than the maximum liability applicable to municipalities as set forth in Minnesota Statutes, Section 466.04, subd. 1, as amended. Fire District shall also maintain automobile, and property insurance coverages. Fire District shall provide **City** proof of such insurance coverages and the additional insured endorsement naming the **City** upon request. Fire District shall also maintain workers' compensation coverage as required by law.
9. **Indemnification.** Fire District agrees to defend and indemnify **City** against any claims brought or actions filed against **City** or any officer, employee, or volunteer of **City** for injury to, death of, or damage to the property of any third person or persons, arising from Fire Districts performance under this Contract for fire services. Nothing herein shall be construed to waive or limit any immunity from, or limitation on, liability available to either Party, whether set forth in Minnesota Statutes, Chapter 466 or otherwise.
10. **Voluntary and Knowing Action.** The Parties, by executing this Contract, state that they have carefully read this Contract and understand fully the contents thereof; that in executing this Contract they voluntarily accept all terms described in this Contract without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.
11. **Authorization.** Fire District and City warrant they have the appropriate statutory authority to undertake the obligations of this Contract, that the persons signing this Contract are authorized signatories for the entities represented, and that no further approvals, actions or ratifications are needed for the full enforceability of this Contract against it; each Party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
12. **Notices.** The Parties' representatives for notification for all purposes are:

PEQUOT LAKES:
Mike Schwankl, Fire Chief
4638 Main Street
Pequot Lakes, MN 56472

Phone: 218-568-8201
Email: pequotfd@pequotlakes-mn.gov

City of Breezy Point:

Phone:
Email:

13. **Modification.** This writing contains the entire agreement between the parties and no alterations, variations, modifications, or waivers of the provisions of this Contract are valid unless reduced to writing, signed by both Fire District and **City** and attached hereto.
14. **Subcontracting & Assignment.** Fire District shall not subcontract or assign any portion of this Contract to another without prior written permission from **City**. Services provided to **City** pursuant to a mutual aid agreement Fire District has, or may enter into, with another entity does not constitute a subcontract or assignment requiring prior approval of **City** so long as Fire District remains primarily responsible for providing fire services to **Citys'** Service Territory.
15. **Termination.** This Contract may be terminated at anytime during its term by mutual agreement of the Parties. Either Party may also terminate this Contract by personally serving a one-year written notice of termination on the other Party. This Contract shall terminate one-year from the date of personal service of the written termination notice, unless the Party serving the notice withdraws the notice in writing before it is effective.

Notwithstanding the foregoing, if **City** fails to make the payment by December 31st for the fire services established herein, Fire District may terminate this Contract 60 days from the date of personal service of written termination notice. As an alternative to termination for non-payment as provided above, services provided by Fire District under this Contract may be suspended by Fire District, in its discretion, upon 30 days written notice to **City**, in the event that **City** does not, by the respective payment dates, make the applicable payments. Service may be suspended by Fire District beginning May 1 or thereafter and such suspension may continue until the required payment is made by **City**. Fire District shall have up to five days following receipt of the required payments and the end of a suspension period to resume service under this Contract.

16. **Service Contract.** This Contract is a service contract. The Parties do not intend to undertake or create, and nothing herein shall be construed as creating, a joint powers agreement, joint venture, or joint enterprise between the Parties.
17. **Records—Availability and Retention.** Pursuant to Minn. Stat. § 16C.05, subd. 5, the Parties agree that the Parties, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of each Party and involve transactions relating to this Contract.
18. **Force Majeure.** The Parties shall each be excused from performance under this Contract while and to the extent that either of them are unable to perform, for any cause beyond its reasonable control. Such causes shall include, but not be restricted to fire, storm, flood, earthquake, explosion, war, total or partial failure of transportation or delivery facilities, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either Party is rendered unable wholly or in part by force majeure to carry out its obligations under this Contract then the Party affected by force majeure shall give written notice with explanation to the other Party immediately.
19. **Third Parties.** Nothing in this Contract shall be construed to create any special relationship between residents of **City** or any individual and Fire District, its agents and employees giving rise to a special duty on the part of, or a cause of action against Fire District, its agents and employees.
20. **Minnesota Law Governs.** This Contract shall be governed by and construed in accordance with the internal laws of the State of Minnesota. All proceedings related to this Contract shall be venued in the State of Minnesota.
21. **Severability.** The provisions of this Contract shall be deemed severable. If any part of this Contract is rendered void, invalid, or otherwise unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Contract.
22. **Data Practices.** The Parties acknowledge that this Contract is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.
23. **No Waiver.** Any Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Contract or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Contract. Any express waiver of a term of this Contract shall not be binding and effective unless made in writing and properly executed by the waiving Party.

24. **Entire Agreement.** These terms and conditions constitute the entire agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Contract.
25. **Headings and Captions.** Headings and captions contained in this Contract are for convenience only and are not intended to alter any of the provisions of this Contract and shall not be used for the interpretation of the validity of the agreement or any provision hereof.
26. **Survivability.** All covenants, indemnities, guarantees, releases, representations and warranties by any Party and any undischarged obligations of the parties arising prior to the expiration of this Contract (whether by completion or earlier termination), shall survive such expiration.
27. **Counterparts.** This Contract may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any Party to the counterpart shall be deemed a signature to the Contract, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing Party.

IN WITNESS WHEREOF, the parties have executed this Contract effective on the date indicated above.

Pequot Lakes Fire District:

By: _____ Date: _____
Angel Zierden, its District Chair

By: _____ Date: _____
Tyler Gardner, Its District Vice Chair

City of Breezy Point:

By: _____ Date: _____
Title:

By: _____ Date: _____
Title: