

**AN AGREEMENT BETWEEN THE CITY OF RUSSELLVILLE FIRE  
DEPARTMENT AND THE ARBORS OF RUSSELLVILLE TO PROVIDE  
FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES**

THIS AGREEMENT (the "Agreement") is made and entered into this 1 day of July 2021, by and between the City of Russellville, a municipal corporation organized and existing under the laws of the State of Arkansas, hereinafter referred to as (the "City"); and The Arbors of Russellville, a duly authorized facility providing Independent Senior Living Facility, hereinafter referred to as (the "Arbors"), hereinafter also collectively referred to as (the "Parties").

**RECITALS**

**WHEREAS**, Parties agree that an effective and efficient Fire and EMS response is essential to the quality of life and expectations of the community and to the residents of Arbors, and;

**WHEREAS**, Parties agree that decreasing response times on Fire and EMS response is essential to the quality of life and expectations of the community and to the residents of Arbors, and;

**WHEREAS**, Parties desire to formalize an agreement to provide for the sustained delivery of Fire and EMS services, and;

**WHEREAS**, Arbors is currently located outside the City's boundaries and consists of 10 acres, including a 63,731 square foot mixed use occupancy, and;

**WHEREAS**, Arbors recognizes the necessity for fire protection and rapid non-transport emergency medical services, and Arbors is interested in entering into an agreement to secure fire and non-transport emergency medical services from the City, and;

**WHEREAS**, City is interested in entering into an agreement with Arbors to provide fire protection and non-transport emergency medical services for purposes according to certain terms and conditions.

**NOW THEREFORE**, in mutual consideration of the terms and obligations set forth herein, City and Arbors agree as follows:

**TERMS AND CONDITIONS**

**1. Fire Protection and EMS Services**

The City shall furnish fire protection, fire prevention and non-transport emergency medical services to Arbors within the property boundaries of The Arbors of Russellville.

**a. Services To Be Rendered:**

Fire Suppression - Suspected or confirmed smoke and/or fire within property

boundaries.

Automatic Fire Alarm - Activated fire alarm signal, excluding supervisory or trouble signal, as dispatched through Pope County 911 Communications.

Emergency Medical Services - Non-transport Advanced Life Support or "life-threat" emergencies as defined by the City and Pope County 911 Communications response protocols.

Fire Prevention Education - Fire extinguisher training and CPR certification of Arbors staff, excluding costs associated with acquiring individual CPR cards.

Fire Inspections - Company or Staff level fire and life safety inspections of the premises on an annual or as-needed basis.

b. Staffing Levels:

Fire Suppression - 2 Engine Companies, 1 Ladder Company and 1 Command Vehicle

Automatic Fire Alarm - 1 Engine Company and 1 Command Vehicle

Emergency Medical Services - 1 Paramedic Engine (1 BLS Engine in the event first due Paramedic Engine unavailable)

2. Performance

Current levels of service are the benchmark which the City holds as "contract standard". It is understood that the City evaluates "level of service" based on staffing levels, response times prevention activities and that the means for achieving "levels of service" is the sole responsibility of the City.

Incremental fluxuations in levels of service due to call volume, complexity of call, simultaneous fires, emergency medical calls within the City, outside the City or with the Arbors, or large-scale natural or manmade disasters, whereas facilities of the City are taxed beyond its ability to render equal protection or other service demands beyond the control of the City are expected.

Arbors agrees that the City shall be relieved of any obligation to provide or liability for failure to provide such Services if in the opinion of the Fire Chief, or Fire Chief designee in charge of any Services, a situation exists within or outside the boundaries of the City so that the service to Arbors may interfere with the City's ability to provide service to persons or property within the City's boundaries. The decision of the Fire Chief, or Fire Chief designee in charge concerning the need for City personnel and equipment at sites other than the Arbors shall be in the sole discretion of the Fire Chief, or Fire Chief designee in charge.

Fluctuation or changes in service beyond acceptable levels, as determined by the Arbors, or increase in service demands beyond an acceptable level, as determined by the City, may be cause for renegotiation or termination of this agreement as provided for in the agreement.

Arbors agrees, except for the interior of any private dwelling, to permit the City's authorized representatives to make fire prevention inspections of the Arbors and to comply with any orders issued with such inspections. Arbors agrees that the City's obligation to provide any fire prevention services under this Agreement is strictly contingent upon the Arbors allowing said fire prevention inspections and complying with any orders issued as a result of said inspections.

### 3. Fees

**Service Fee.** In return for services provided by the City, Arbors shall, immediately upon execution of this Agreement, pay an Annual Service Fee to the City. Arbors agrees to pay the following to the City until expiration or termination, as herein provided:

- a. For fire protection and non-transport emergency medical services, Arbors agrees to pay the City \$0.00 per year for each year that this Agreement remains in effect.
- b. The above rates shall be adjusted annually based upon the Consumer Price Index average for the 12 months ending on July 1 of each year. The first adjustment shall be made on July 1, 2022 and occur every July 1 for each year that this Agreement remains in effect.

### 4. Term

The term of this Agreement shall be for one (1) year from the date of this Agreement's execution.

- a. **Renewal.** At least thirty (30) days before the anniversary date of this Agreement, both Parties may elect to renew this Agreement to the same terms and conditions for another one (1) year, by delivering, through Certified First-Class mail, written notice to the other Party to renew the Agreement. The notice shall be addressed as provided below, and shall be postmarked at least thirty (30) calendar days prior to the anniversary date of the then-current Agreement year.
- b. **Non-renewal.** Notwithstanding the above provision, this Agreement will not be renewed if either party fails to deliver, by Certified First-Class mail, written notice to the other that it elects to renew the Agreement, in which case

the Agreement shall expire in accordance with its then-current term.

- c. Expiration. This Agreement shall expire at midnight, one (1) year from the date of the Agreement's execution.

## 5. Termination

- a. Substantial Breach. Arbors agrees that its failure to abide by the terms and conditions of this Agreement shall constitute a substantial and material breach.
- b. Right of Termination. Without limitation of rights of termination provided in section 4 above, either party may terminate this Agreement upon substantial and material breach by the other party.
- c. Notice of Termination: Cure. Written notice of termination shall be delivered to the party in breach. Notice shall be delivered 45 days prior to termination. Any party in breach shall have a reasonable time after written notice of breach, not exceeding 45 days, in which to fully perform its obligations. If full performance is so rendered, the Agreement shall not be terminated under this section unless the breach has been known and preventable and has recurred following past notices of similar breach.
- d. Effect of Termination on Service Fee. The Service Fee shall be prorated to the days of service provided by the City under the Agreement to the Arbors and retained and the remaining Service Fee shall be returned to the Arbors .

## 6. City Not Liable

- a. Failure to Provide Service. Arbors acknowledges that acts of God, equipment failure, human errors and omissions, and other mishaps, can affect or interrupt the City's ability to provide fire protection and non-transport emergency medical services, and Arbors agrees that it is the intention of the parties that City shall not expose itself to potential liability by agreeing to provide fire protection and non-transport emergency services to Arbors.
- b. Service Fee Based on Non-liability. Arbors recognizes and agrees that the Service Fee charged as here provided is available to Arbors only because City's liability is waived by Arbors as herein provided, and that City's agreement to provide fire protection, fire prevention education, fire inspections and non-transport emergency services at the Service Fee is conditioned upon Arbors' agreement to the terms of this Agreement including all limitations on City's liability for failure to provide fire protection, fire prevention education,

fire inspections and non-transport emergency services to Arbors.

- c. Non-liability. In exchange for the City agreeing to provide fire protection services, fire prevention education, fire inspections or non-transport emergency medical services ("Services") to the Arbors and its customers at the rate of \$0.00 for one (1) year, Arbors hereby expressly and specifically forever releases and discharges the City from, of and for, and hereby waives and surrenders, any and all past, present and future claims, counterclaims, demands, suits, actions, causes of actions, liabilities, obligations, damages, injuries, of any nature or kind whatsoever, including claims for personal injury or property damage, plus any and all costs, fees and expenses, including reasonable attorney's fees, whether arising at law or in equity, under the common law, federal, state, local or other law, in any manner relating to or arising from the Services rendered to the Arbors or its customers on or around its property in performance of this Agreement, regardless of the City's failure to provide fire protection and non-transport emergency medical services, whether due to maintenance, reduced supplies, act of God, human error, other mishap, failure to respond promptly or the failure to respond to any call for fire protection and emergency services to the Arbors.

#### Indemnification;

To the extent the City is held liable to any third (3<sup>rd</sup>) party as a result of the performance of services provided under this Agreement, Arbors shall hold protect, defend, indemnify and hold harmless the City its elected officials, officers, employees, and agents against any and all claims, costs, expenses, awards of damages or judgments, including reasonable attorney's fees. This provision applies to injuries to persons or property caused by City employees who are providing the services as defined in this Agreement to the Arbors, its customers or its property and applies to injuries to persons or property caused by the operation of City vehicles by City employees or officers while in route to or from facilities of Arbors when providing the services as defined in this Agreement.

#### 7. Tort Immunity

Notwithstanding any statement contained herein, the City in no way waives or intends to waive the immunity protections provided to the City, its elected officials, officers, employees and agents under Ark Code Ann. § 21-9-301.

#### 8. Notice

Notice pertaining to this Agreement shall be made by Certified First-Class mail addressed as shown below, unless otherwise specified herein:

**City:**

**Arbors:**

City of Russellville  
Attn: Fire Chief  
203 South Commerce Avenue  
Russellville, AR 72801

The Arbors of Russellville  
697 Bradley Cove Road  
Russellville, AR 72802

9. Non-Waiver

City's failure to exercise any or all remedies at the time of any breach of this Agreement by Arbors shall not operate as a waiver of any remedy for that breach or any other breach.

10. Choice of Law: Time Essential

This Agreement shall be construed according to the laws of the State of Arkansas, and all matters of litigation relating to it shall be conducted in the courts of Pope County, Arkansas.

The parties to this Agreement agree to comply with all applicable federal, state, local laws, and ordinances, together with those rules and regulations of the City of Russellville which apply to fire protection.

Time is of the essence in all matters pertaining to this Agreement.

11. Non-Assignment

City shall not assign or transfer its obligations under this Agreement to any other party. This Agreement is not assignable by Arbors without the prior written consent of the City which may be withheld for any reason.

12. Binding on Successors

This Agreement shall be for the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the respective parties hereto and shall be only upon execution by both parties and the passage of a Resolution by the Russellville City Council authorizing the Mayor and City Clerk-Treasurer to execute this Agreement.

13. Amendment

No modification, termination or amendment of this Agreement may be made except by written agreement signed by both parties hereto.

14. Severability

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

15. Entire Agreement

This Agreement sets forth the entire agreement of the parties, and there are no other agreements or understandings, oral or written, between them concerning the subject matter hereof.

16. Captions

The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.

17. Counterparts

This Agreement may be executed in any number of counterparts, and each counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

18. Authorized Representatives

By signature below, each party certifies that the individuals listed in this document as representatives are authorized to act in their respective areas for matters related to this Agreement. Each party shall deliver to the other an officially adopted document evidencing such authority. IN WITNESS WHEREOF the parties have caused their signatures to be affixed hereto:

CITY OF RUSSELLVILLE

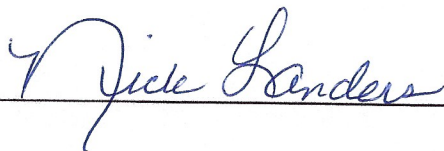
THE ARBORS OF RUSSELLVILLE

By:



Richard Harris, Mayor

By:



Date:

<sup>21</sup> 8 - 29 - 2020 <sup>21</sup>

Date:

8-16-2021