



The Childs Law Firm, PLLC

Beth Anne Childs | *Attorney At Law*

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January 14, 2022

Denielle Williams Chaney
Chaney Law Firm, P.L.L.C.
P.O. Box 30813
Edmond, Oklahoma 73003

In re: Legal Opinion Regarding Fire Subscription Service

Dear Ms. Chaney:

Thank you for providing me the opportunity to respond to your inquiries regarding the authority of the Town of Luther to implement a fire subscription service. In our discussions, you requested identification of specific statutory authority for the Town to charge fees for fire protection services outside the Town limits. Contracts regarding municipal fire protection services are addressed in 11 O.S. § 29-106. It provides in full as follows:

Any contract for fire protection entered into by the governing bodies of municipalities shall expressly stipulate the terms and conditions upon and in compliance with which each party thereof is to cooperate in furnishing, maintaining, and operating fire equipment for outside aid or mutual aid or making payment for such service. **Governing bodies may contract to supply fire protection to owners of any individual properties.** *Emphasis added.*

The Town of Luther Fire Service Annual Enrollment Application for Properties Outside the Town Limits clearly constitutes a contract between the Town and individual property owners. As such, the Board of Trustees had specific statutory

authority to implement the subscription program. I have attached a copy of the Resolution approving the program, as well as the Application/Contract, and the fee schedule.

Imposition of fees for fire services was also addressed by the Oklahoma Attorney General in 1995 OK AG 105. Paragraphs ¶4-6 discuss the ability of municipalities to conduct business. It provides in pertinent part:

The general powers of municipal corporations are set out in 11 O.S. 1991, § 22-101. They include the power to: Make all contracts and do all other acts in relation to the property and affairs of the municipality, necessary to the good government of the municipality, and to the exercise of its corporate and administrative powers...This is a fairly broad provision allowing municipalities to do that which is necessary to the good government of the municipality...The Oklahoma Constitution specifically grants every municipal corporation 'the right to engage in any business or enterprise which may be engaged in by a person, firm, or corporation' Okla. Const. art. XVIII, § 6..."

The Attorney General's Opinion goes on to discuss the ability of municipalities to "do all things necessary and proper in the discretion of the governing body of the municipality pursuant to the authority granted to it by the Constitution and laws of this state to maintain said business or enterprise for the benefit of the municipality." 11 O.S. § 22-104(1). Based upon the cited provisions of state statute and the Oklahoma Constitution, the Attorney General concluded that municipalities have the power to regulate charges for public services, including the provision of fire protection.

As I am sure you are aware, municipalities are specifically authorized by state statute to establish and operate a Fire Department. 11 O.S. § 29-101. Fire Departments have further been defined as public utilities. *Town of Nichols Hills vs. Williamson*, 1958 OK 77. Pursuant to *Sharp vs. Hall*, 1947 OK 193, cities can charge for the use of a municipal utility so long as the charges are not arbitrary, discriminatory or unreasonable.

In our previous discussions, you cited the Town's agreement with Oklahoma County for Fire Equipment, as well as 19 O.S. § 351.1, which authorizes counties to collect charges for fire protection services provided by a municipality. You will note that there is no prohibition in the agreement for the Town to charge for these services. Additionally, the County has not requested that the Town cease charges for fire

protection services, nor have County officials requested an amendment to the agreement or indicated they will in any way withdraw the use of equipment. A copy of the Fire Equipment Agreement is attached for your review.

Finally, the Town of Luther Code of Ordinances authorizes the Board of Trustees to enter into contracts for provision of fire protection services outside the Town limits. Section 13-210 provides as follows:

“The town is hereby authorized and empowered to enter into contracts or agreements with individuals, firms, private corporations or associations, or political subdivisions of the state for fire protection outside the corporate limits of the town, and to contract to provide fire protection jointly with other organizations and municipal subdivisions of the state.”

The Code of Ordinances also addresses contract terms and fees for services. Section 13-211 provides in full as follows:

“Any contract entered into by the town with an individual owner, firm, private corporation, or association, for outside aid, or mutual aid for fire protection, shall provide for the payment by the owner, firm, private corporation, or association, or political subdivision to the town for such fire apparatus and personnel at the rate per call or per equipment as set by the town board. All monies received from the calls shall go into the general fund.”

As previously discussed, the Board of Trustees adopted a comprehensive Resolution imposing fees for the cost of providing fire protection services. It also approved the Agreement between the Town and the owners of individual properties outside the Town limits. The Resolution and the resultant actions are clearly in accordance with Oklahoma State Statutes, the Oklahoma Constitution, and the Luther Code of Ordinances. That notwithstanding, based upon the concerns articulated by those serviced by the Luther Fire Department, the Board of Trustees will reconsider the terms of the agreements, the subscription service fees, and the costs of services provided by the Town.

I hope that you find this information helpful. Should you have any questions, please do not hesitate to call at 918-521-3092.

Very Truly Yours,

A handwritten signature in blue ink that reads "Beth Anne Childs". The signature is written in a cursive, flowing style.

Beth Anne Childs
Attorney at Law

RESOLUTION NO. 2021-13R

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF LUTHER, OKLAHOMA, APPROVING AND AUTHORIZING AGREEMENTS WITH INDIVIDUALS, FIRMS, PRIVATE CORPORATIONS, ASSOCIATIONS, AND POLITICAL SUBDIVISIONS FOR FIRE PROTECTION OUTSIDE THE CORPORATE LIMITS OF THE TOWN; ESTABLISHING THE FEES FOR FIRE APPARATUS AND PERSONNEL, AS WELL AS EQUIPMENT AND SUPPLIES FOR BOTH INSIDE AND OUTSIDE THE CORPORATE LIMITS OF THE TOWN; AND AUTHORIZING THE TOWN MANAGER TO PROVIDE NOTICE TO THOSE OUTSIDE THE TOWN LIMITS AND ENTER INTO AGREEMENTS FOR THE PURPOSES OF PROVIDING FIRE PROTECTION IN ACCORDANCE WITH THE PROVISIONS OF THIS RESOLUTION AND BY THE LUTHER CODE OF ORDINANCES

WHEREAS, Section 13-210 of the Luther Code of Ordinances authorizes and empowers the Town to enter into contracts or agreements with individuals, firms, private corporations, associations, and political subdivisions for fire protection outside the corporate limits of the Town; and

WHEREAS, Section 13-211 of the Luther Code of Ordinances provides that any contract entered into by the Town shall provide for payment for the fire apparatus and personnel at the rate per call or per equipment as set by the Board of Trustees; and

WHEREAS, the Board believes that it is in the best interest of the citizens of Luther and the health, safety, and welfare of those inside and outside the Town limits to approve and authorize Agreements for fire protection outside the corporate limits of the Town.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF LUTHER, OKLAHOMA, THAT the Agreement with individuals, firms, private corporations, associations, and political subdivisions for fire protection outside the corporate limits of the Town attached hereto as Exhibit "A" is hereby approved.

NOW, THEREFORE, BE IT FURTHER RESOLVED THAT the fees for fire apparatus and personnel, as well as equipment and supplies for the provision of fire services inside and outside the corporate limits of the Town are hereby established as set forth in Exhibit "B."

NOW, THEREFORE, BE IT FURTHER RESOLVED THAT the Town Manager is authorized to provide notice to those outside the town limits and to enter into agreements for the purposes of providing fire protection in accordance with the provisions of this Resolution and by the Luther Code of Ordinances.

This Resolution is approved in open meeting of the Town of Luther, Oklahoma, on the 26th day of August, 2021.

W. Terry Arps
Mayor William Terry Arps

ATTEST:

Scherrie Liscock
Town Clerk



Approved as to form and legality:

Beth Anne Childs
Beth Anne Childs, Town Attorney

TOWN OF LUTHER
FIRE SERVICE ANNUAL ENROLLMENT APPLICATION
PROPERTIES OUTSIDE THE TOWN LIMITS

I, _____, residing or owning property located at _____ (the "Property"), hereby elect to participate in the Town of Luther's Fire Service Subscription Program (the "Program)."

As a resident or owner of this Property, I understand that the Program will run from October 1-September 30 of each year. I understand that my insurance company will be responsible for payment of fire services and that it is my responsibility to provide the Town with any valid insurance within sixty (60) days of any service. In addition, I agree to furnish any information requested by my insurance company in order to facilitate the payment of any fire-related claims for this property.

I understand that the Program does not cover fire services rendered by other fire departments called to assist the Town of Luther pursuant to a mutual aid, inter-local, or other similar assistance. This service is offered entirely as a voluntary program for rural residents and is not intended to preclude, interfere with, or compete with any other available fire protection option the residents of the area may have available to them. Service shall be subject to the availability of Town personnel to respond, with the Town of Luther Fire Department maintaining appropriate staffing levels within the Town limits in order to protect the Luther corporate limits.

I agree and understand that participation in this program is strictly voluntary and that the annual cost is \$250.00, which is paid at the time of this application. I also understand that this Program does not insure the Property against loss and that as consideration to participate in the Program, I, on behalf of myself, my successors, executors, assigns and heirs, agree to release, indemnify and hold harmless the Town of Luther, its officials, agents, employees and volunteers from any and all liability, loss claims and demands, actions or causes of action (at law or in equity) for any injury, injuries of any nature that I may sustain or incur arising out of any act, occurrence, accident or condition.

Signature: _____ Dated: _____

Printed Name: _____

Phone Number: _____ Email: _____

PLEASE SUBMIT THIS COMPLETED APPLICATION AND THE ANNUAL FEE TO:

The Town of Luther
Fire Services Subscription Program
PO Box 56
Luther, Oklahoma 73054



EXHIBIT B – TO RESOLUTION NO. 2021-13R

Establishing fees for fire apparatus and personnel, as well as equipment and supplies for the provision of fire services outside corporate limits of the Town of Luther.

Each Engine per hour	\$300.00
Each Tanker per hour	\$300.00
Each Brush Truck per hour	\$150.00
Each EMS/Rescue unit per hour	\$150.00
Command Unit	\$ 40.00
Responding Personnel per hour	\$ 15.00



FIRE EQUIPMENT AGREEMENT
BETWEEN
OKLAHOMA COUNTY BOARD OF COUNTY COMMISSIONERS
AND
THE TOWN OF LUTHER

July 1, 2021 through June 30, 2022

This FIRE EQUIPMENT AGREEMENT (the "Agreement") is entered into between the **BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA COUNTY**, a political subdivision organized and existing under the laws of the State of Oklahoma (the "Board"), and **THE TOWN OF LUTHER, a municipal corporation**.

WHEREAS, the Board is empowered pursuant to Title 19, Oklahoma Statutes, Section 351, to provide firefighting service in the County and to expend certain Oklahoma County funds to rent, lease and purchase firefighting equipment; and

WHEREAS, while the county may provide fire protection services through a county fire department, a Board of County Commissioners need not duplicate fire protection services provided by other legal entities within the county, and

WHEREAS, a Board of County Commissioners has legal authority to contract with municipalities to provide fire protection services to persons and property not located within the corporate limits pursuant to 19 O.S. §351.1, and

WHEREAS, pursuant to the Interlocal Cooperation Act in Title 74, Oklahoma Statutes, Sections 1001, *et seq.*, and Title 19, Oklahoma Statutes, Section 351.1, the Board and the Town of Luther are authorized to enter into an agreement providing for fire protection services for persons and property located within the unincorporated areas of Oklahoma County; and

WHEREAS, by means of this Agreement, the Board desires to provide certain firefighting equipment to the Town of Luther in return for the Town of Luther's Fire Department furnishing fire protection services for persons and property located within the unincorporated areas of Oklahoma County.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other valuable consideration, the parties agree as follows:

1. **Term.** This Agreement shall commence on July 1, 2021, and shall terminate on June 30, 2022. This Agreement is renewable for an additional fiscal year upon written approval of both parties. Otherwise, this Agreement may be terminated by either of the parties by giving at least thirty (30) days written notice of such termination. On the termination of this Agreement either by termination

of the fiscal year for which the agreement is written, or written 30-day notification, the Town of Luther shall return the Equipment to the County.

2. **Equipment.** The Board shall provide the Town of Luther with the following firefighting equipment (hereinafter called the "Equipment"):

Property Description	Serial Number	County ID Number
2018 Dodge RAM 4500, Cab & Chassis	3C7WRLAL1JG362073	SP 302-00065
2000 Ford BP F-450	1FDXF47F2YED42199	SP 302-00014
Brush Guard	N/A	SP 302-00014
Signal Vista Siren w/Speakers	00060408	
Task Force Tip Nozzle	TFTB-317114	
Motorola Radio	869FAJ8798	N/A
Skid Unit Bed (includes the following)		SP 649-00123
Black Poly 300 gallon Tank		SP 649-00125
Waterous Vanguard 18hp pump	131286	SP 651-00121
Hannay Hose Reel		SP 652-00089
Hannay Hose Reel	885712	SP 652-00090
Skid Unit Bed (includes the following)		SP 649-00124
Black Poly 300 gallon Tank		SP 649-00126
Waterous Vanguard 18hp pump	131285	SP 651-00120
Hannay Hose Reel	1027470	SP 652-00091
Hannay Hose Reel	1025668	SP 652-00092
Skid Unit (includes the following)		
Pump w/Motor	00B1009	
Hannay Hose Reel w/Hose	1258486	
Hannay Hose Reel w/Hose	1258482	
Plas-Mac 318 Gallon Tank	109PMISKU300	
1986 Ford BP	1FDHF38L8FKB61402	SP 301-00010
300 Gallon Tank	85-0901	SP 649-00079
Hannay Hose Reel	453466	SP 652-00078
Miscellaneous Equipment		
1500 Gallon Poly Tank	110526	SP 649-00122
300 Gallon Tank	071884	SP 649-00075
Hannay Hose Reel	759205	
18 HP Vanguard Hale Pump	02F0938	
Hannay Hose Reel		SP 652-00027
Hannay Hose Reel	18248	

Hannay Hose Reel	1713162	
Honda 18 HP Pump	P702-1218	
Floto Pump	1177	
EF Johnson Radio	5170F3011C36069	SP 602-00637
EF Johnson Radio	5170F3011C36092	SP 602-00638
EF Johnson Mobile 800 MHz Radio	5378H2414C21742	SP 602-01037
Motorola CDM-1250	103TMJ8343	N/A
Motorola CDM-1250	103TMJ8322	N/A
Motorola APX7500 Mobile Radio	656CNM0195	SP 602-00656
Kenwood TK-2180 HH MIII TFS	B4500396	N/A
Kenwood TK-2180 HH MIII TFS	B4500397	N/A
Kenwood TK-2180 HH MIII TFS	B4500398	N/A
Kenwood TK-2180 HH MIII TFS	B4500399	N/A
Kenwood TK-2180 HH MIII TFS	B4500400	N/A
Kenwood TK-2180 HH MIII TFS	B4500401	N/A
Kenwood TK-2180 HH MIII TFS	B4500402	N/A
Kenwood TK-2180 HH MIII TFS	B4500403	N/A
Kenwood TK-2180 HH MIII TFS	B4500404	N/A
Kenwood TK-2180 HH MIII TFS	B4500405	N/A
Kenwood TK-2180 HH MIII TFS	B4500406	N/A
Kenwood TK-2180 HH MIII TFS	B4500407	N/A
Kenwood TK-7180 HH MIII TFS	B4800073	N/A
Kenwood TK-7180 HH MIII TFS	B4800074	N/A
Kenwood TK-7180 HH MIII TFS	B4800075	N/A
Kenwood TK-7180 HH MIII TFS	B4800076	N/A
Kenwood TK-7180 HH MIII TFS	B4800077	N/A
Kenwood TK-7180 HH MIII TFS	B4800078	N/A
Kenwood TK-7180 HH MIII TFS	B4800079	N/A
Kenwood TK-7180 HH MIII TFS	B4800080	N/A
Kenwood TK-7180 HH MIII TFS	B4800086	N/A
Kenwood TK-7180 HH MIII TFS	B4800087	N/A
UVC 2 Hanging UV Light Unit	1198	SP 503-00010
UVC 2 Tripod UV Light Unit	1233	SP 503-00043

3. **Purpose.** The Town of Luther shall use the Equipment for the purpose of providing firefighting and rescue services to persons and property located within the unincorporated areas of Oklahoma County, including the Town of Luther, or, when provided by law or pursuant to an agreement under 63 O.S. § 695, Oklahoma Intrastate Mutual Aid Compact, to other cities, towns, or political subdivisions of the State of Oklahoma as necessary for mutual aid and assistance; and further, to respond to major natural or man-made disasters, including but not limited to bomb disposal and hazardous material handling, in such jurisdictions when so requested by the Oklahoma County Emergency Management Director or appropriate authority.

4. Maintenance and Repair. The Town of Luther will be solely responsible for: (a) maintaining the Equipment in safe operating condition in accordance with the laws of the State of Oklahoma, including, but not limited to, periodic safety checks and maintenance reviews required by the Board to ensure that the Equipment meets or exceeds all safety provisions and requirements; (b) scheduling necessary maintenance; (c) providing housing for the Equipment inside a structure suitable to protect the Equipment from adverse weather and vandalism when the Equipment is not in use; and (d) notifying the Oklahoma County Emergency Management Director whenever repairs or preventive maintenance work is needed to keep the Equipment in optimum operating condition, and thereafter taking the Equipment for repairs or servicing to the Oklahoma County Highway District site designated by the Oklahoma County Emergency Management Director, or other appropriate maintenance or repair facility, as necessary.

5. Indemnification. The Town of Luther assumes all liability for any personal injuries, death claims, property damages or any other damages arising out of the possession and operation of the Board's firefighting equipment or any action or causes of action arising there from pursuant to this Agreement. The Town of Luther further agrees to indemnify and hold the Board and Oklahoma County, their employees, officers, and agents, harmless from any claims of any kind, including attorney fees and costs of defending same that arise from the use of the Equipment. The Town of Luther agrees to maintain liability insurance in an amount sufficient to satisfy any claim or lawsuit that might arise under the Governmental Tort Claims Act (Title 51 Oklahoma Statutes, Sections 151 et seq.) covering the obligations contained herein and including a provision that the Board, at the address set forth below, will be notified no less than ten (10) days prior to any cancellation of the policy, a copy of which insurance or renewal policy shall be submitted to:

Oklahoma County Emergency Management Director
320 Robert S. Kerr Avenue, Suite 101
Oklahoma City, Oklahoma 73102

6. Workers' Compensation Liability. The Town of Luther shall provide workers compensation insurance for all personnel utilizing the Equipment or assume sole responsibility thereof.

7. Use of Equipment. The Town of Luther shall have the sole responsibility of ensuring that all drivers of the Equipment have a current valid State of Oklahoma driver's license and have had appropriate training in the use of the vehicle and the Equipment.

8. Notice of Accidents. Any Oklahoma County-owned Equipment involved in an accident, of any type, shall be reported, including a copy of any police or

highway patrol report, to the Oklahoma County Emergency Management Director within ten (10) days of said accident.

9. Injuries. The Town of Luther shall be solely liable for any operator, passenger, guests or any other persons injured by the Equipment. A written report of such injury shall be submitted to the Oklahoma County Emergency Management Director within ten (10) days from the date of the injury.

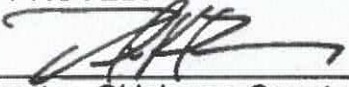
10. Destruction of Equipment. Neither the Board nor any department of Oklahoma County is under any obligation to replace the Equipment if the Equipment is destroyed or damaged beyond repair. The Town of Luther may, at its discretion, provide additional insurance coverage to insure against said damage or destruction. A copy of any such policy or renewal shall be submitted to the Oklahoma County Emergency Management Director, 320 Robert S Kerr Avenue, Suite 101, Oklahoma City, Oklahoma, 73102, within ten (10) days after receipt by the Town of Luther.

11. Breach of Agreement. Failure to adhere to any of the terms of this Agreement will result in the Equipment being immediately recalled by the Board.

12. Eastern Oklahoma County Fire Service Technology Fee. The Town of Luther/Luther Fire Department agrees to pay the Oklahoma County Office of Emergency Management an annual sum of \$2,000.00, for use, basic maintenance and basic repair of the VHF Public Safety Radio System. This amount is due within sixty (60) days of the execution of this agreement as evidenced by approval and signature of the Oklahoma County Board of County Commissioners. This fee shall be remitted to the Oklahoma County Office of Emergency Management at the address listed in item #5 above.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth beside their signatures, with this Agreement to be effective as of July 1, 2021.

APPROVED:



Director, Oklahoma County Emergency Management

Approved as to form and legality this 8th day of June, 2021.



Assistant District Attorney

THE TOWN OF LUTHER

APPROVED AND AGREED TO by the Town of Luther this 24 day of
JUNE, 2021.

BY: William T. Arps, Mayor

Printed Name: WILLIAM T. ARPS

ATTEST: Scherie Pidcock



BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA COUNTY, OKLAHOMA

APPROVED AND AGREED TO by the Board this 19th day of

July, 2021.

By: Carrie Blumert
Carrie Blumert, Member

By: Brian Maughan
Brian Maughan, Member

By: Kevin Calvey
Kevin Calvey, Member

ATTEST:

David B. Hooten
David B. Hooten, County Clerk

