

FIRE PROTECTION CONTRACT

**VILLAGE OF BUCHANAN WITH BUCHANAN ENGINE CO. NO. 1,
INCORPORATED**

THIS AGREEMENT made as of the day of November _____2020, by and between the VILLAGE OF BUCHANAN (“VILLAGE”), a municipal corporation of the County and State; and BUCHANAN ENGINE CO. NO. 1, INCORPORATED (“BEC”), a corporation duly organized pursuant to the provisions of the Membership Corporation Law of the State of New York, and located in the Village of Buchanan, County of Westchester, State of New York.

WHEREAS, the BEC shall render fire protection and emergency service to all property and people within the boundaries of the Village of Buchanan, except for any property located within the Verplanck Fire District and property owned by Indian Point, identified by the map provided by the BEC attached hereto, for a term of one (1) year, commencing on _____-and ending on _____ ; and

WHEREAS the VILLAGE and the BEC are desirous of entering into an agreement to provide Fire Protection Services to the VILLAGE, and

1. The VILLAGE is a municipal corporation of the State of New York.
2. The VILLAGE desires to contract with the BEC for Fire Protection and Emergency Services.
3. The BEC has the necessary qualifications to provide the services desired by the VILLAGE.
4. The BEC is willing to be employed by the VILLAGE, and the VILLAGE is willing to employ the BEC on the terms and conditions hereinafter set forth.
5. The VILLAGE has the necessary funds to pay the BEC pursuant to the terms of the Contract; and

WHEREAS, the BEC agrees to furnish to the VILLAGE Fire Protection and Emergency Services in the Village of Buchanan for the 2020/2021 fiscal year, and the VILLAGE agrees to pay the BEC the sum of TWO HUNDRED AND FIFTEEN THOUSAND (\$215,000.00) DOLLARS AND NO/100 for its services for said year, subject to the provisions of Section 4, below; and

WHEREAS, The Trustees of the Village of Buchanan, New York, have heretofore adopted a resolution permitting calls or alarms of fire in the Village be given by any person, now, therefore, the BEC agrees to respond with the apparatus and a crew of qualified first responders to all calls or alarms, by whomsoever made, in the event of fire or other emergency in said identified area of the Village, and in the performance of its duty of responding, agrees at all times that type and degree of protection to the property and the extinguishing a fire, agrees at all times that type and degree of protection to the property and the inhabitants residing within said identified area of the Village as is generally given and which will assure prompt service and the use of equipment generally recognized as sufficient for the extinguishment of fires or response to emergencies within the identified area of the Village; and that in addition thereto, the BEC, will, with its apparatus and crew, attend upon all alarms, not only for the extinguishment of fires, but when necessarily made for the protection of lives and property when endangered by fire or otherwise.

NOW, in consideration of the mutual covenants contained herein, the VILLAGE and the BEC hereby agree that the terms and conditions of this Contract shall govern the agreement between the parties, and the parties hereto further agree as follows:

SECTION I - EMPLOYMENT

1. The members of the BEC, while engaged in the performance of their duties in answering, attending upon or returning from any call provided for by this Contract and otherwise set

forth in the Volunteer Firefighters' Benefit Law, shall have all the rights, privileges and immunities granted by the laws of the State of New York.

2. The BEC shall at all times during the period of this contract be subject to call for attendance upon any situation requiring Fire Protection and Emergency Services occurring in the identified area of the Village. When notified of a call within the identified area of the Village, the BEC shall respond and attend upon the call without delay with suitable equipment and qualified personnel. Qualified personnel shall mean that the responding individual shall have met the minimum training standards based on the fire fighter's tasks or position in responding to the emergency. Upon arriving at the scene of the call the firepersons and emergency first responders attending shall proceed diligently and, in every reasonable way, attend to the circumstances of the call including the saving of life and property. Provided a system of mutual aid is in place, the failure of the BEC to respond to a call, or the failure of the BEC to respond to a call when multiple calls arise at or about the same time shall not constitute a breach of this Contract.

The BEC shall provide a copy of its training policy or program, which shall comply with the NYS Department of Labor's Public Employees Safety and Health Bureau (PESH) "Best Practices", to the VILLAGE and shall certify that each member has completed required training pursuant to the BEC training policy/program on an annual basis.

3. By the first day of February of each year, the BEC shall provide a copy of its budget for the following year to the VILLAGE. The VILLAGE shall hold a public hearing and provide to the public the proposed contract along with the proposed contractual amount no later than March 31 of each year. Along with copies of the budget, a detailed breakdown of its vehicle and apparatus replacement plans for the next five years shall be provided along with detail regarding the useful life of the BEC's apparatus and equipment, anticipated repairs, maintenance, or replacement needed. Any

singular item anticipated to be repaired, maintained, or replaced at a cost greater than \$25,000 should be included in the plan.

4. The BEC shall, in accordance with Section 209-z of the General Municipal Law, have its records audited annually by an independent certified public accountant or firm of certified public accountants and within 180 days of the end of the BEC's fiscal term or upon completion of the audit following any extension period authorized by the IRS, it shall submit a copy of its audit report to the VILLAGE, including all activity of the apparatus account. If the Village does not receive the final audit within 180 days of the end of the BEC's fiscal year, the BEC will submit a draft audit report within that time period, which shall include all activity of the apparatus account.

In the event that the BEC does not submit the certified annual audit described above, the BEC shall submit to the VILLAGE the below referred items on a monthly basis until such time as the most current year's audit is submitted to the Village Board.

- i.** Monthly bank account statements for all BEC firematic accounts;
- ii.** All firematic revenues received; and
- iii.** All firematic expenses disbursed.

5. Prior to approving a new member, the BEC shall submit the name, address and any additional necessary information required to allow the VILLAGE to run the driver through the NYS License Event Notification System (LENS) to determine the suitability of said member to drive VILLAGE and/or BEC apparatus and vehicles. The VILLAGE will provide any alerts to the BEC President and to the prospective member and reserves the right to forbid said individual from driving VILLAGE and/or BEC apparatus and vehicles based upon a LENS notification. Copies of valid Driver's Licenses shall be provided to the VILLAGE for all currently qualified drivers of emergency apparatus and vehicles.

6. The BEC shall, on an annual basis, provide the VILLAGE with a copy of its By-Laws and driver training policy or program, as well as a list of all currently qualified drivers. All BEC driver training records shall be provided to the Village Board of Trustees as training is completed and before a member can be qualified to drive.

7. Following the approval by the BEC of a new member, the BEC shall submit the name of the new member along with a copy of the new member's application, results of arson investigation and sex offender registration (Pursuant to Article 6-c of Correction Law) to the Village Board for review. The VILLAGE reserves the right to deny membership, which shall not be unreasonably withheld, but in no event later than the 30th day following receipt by the Village Clerk of the submittal of the new member information, or at the next Village Board meeting after the submission is made by the BEC. Along with the submission of new member information, the BEC shall confirm in writing to the Village Board that the addition of the new member will not violate the terms of Paragraph 9 below.

8. Following acceptance of a new member by BEC and the Village, the member will be referred for a physical examination performed by a duly licensed and qualified physician selected by BEC. The BEC shall notify the Village once the physical examination is completed and certify to the Village the level of firefighting service said new member is qualified for.

9. The BEC must maintain an annual "active" membership containing no more than forty-five (45%) percent of its members living or working outside of the fire protection district. "Active" members are those members who meet the requirements of the Department's By-Laws but who also are physically able to respond to calls and to participate in drills and training. Prior to the commencement of the contract year, the BEC shall submit to the Village Board a list of all members of the BEC existing at that time along with their corresponding addresses and copies of their driver's license or other form of picture identification to confirm compliance with this

provision. In the event that a **new** active member moves out of the fire protection district, his or her continued membership in the BEC shall be subject to the approval of the Village Board in accordance with Village Law Article 10 (10-1006), which approval shall not be unreasonably withheld. Requests for approval by the Village Board, which shall contain the member's new address, shall be sent in accordance with Paragraph 7, above. The Village shall also be notified of the change of address of the members continually throughout the year in the event they need to be contacted for LOSAP purposes.

10. Any member nominated to the position of Captain or Chief must be approved by the VILLAGE, which approval shall not be unreasonably withheld.

11. The BEC shall, on an annual basis provide a copy of the most recently filed IRS form 990 and shall continue to comply with all applicable laws, rules and regulations in effect as of the date of this Contract including but not limited to, Section 519 of the Not-For-Profit Law.

11. By the third Thursday of each month, a report shall be submitted to the Village Board, for the prior month, containing the volume and types of calls received broken out between fire and other emergency calls and if mutual aid was required.

12. By February 1st, the BEC shall submit a report to the Village Board along with copies of correlating sign in sheets setting forth the point requirements of each member in the BEC in order to confirm that the member has qualified for LOSAP benefits. The report shall be broken out by the categories delineated in Section 217 of the General Municipal Law or as otherwise defined by the Village's LOSAP plan.

13. All fundraising by the BEC must be approved by the VILLAGE. The BEC shall provide a statement to the VILLAGE in January of each year advising as to all proposed/planned

fundraising activities for the year. BEC may request VILLAGE approval for new or additional fundraisers not listed on the statement provided in January at any time during the calendar year.

14. The Chief of the Department and/or his/her designee shall appear at the monthly meeting of the Village of Buchanan Board of Trustees, which occurs on the first Tuesday of each month to provide information and any updates from BEC.

15. Within ninety (90) days after the signing of this Contract, the BEC shall file with the Village Clerk a copy of its duly adopted Code of Ethics.

SECTION 2

BEST EFFORTS OF THE BUCHANAN ENGINE COMPANY

The BEC agrees that, at all times, it will faithfully, industriously and to the best of its ability, experience and talents perform all of the duties that may be required of and from it pursuant to express and implicit terms hereof, to the reasonable satisfaction of the VILLAGE.

SECTION 3 - TERMS OF EMPLOYMENT

Employment under this Contract shall commence as of _____, 2020 and shall continue for a period of one (1) year until _____, 2021.

SECTION 4-COMPENSATION OF FIRE DEPARTMENT

1. The VILLAGE, in consideration of the BEC faithfully complying with all the terms and conditions herein set forth, shall pay to the BEC and the BEC shall accept from the VILLAGE the sum of TWO HUNDRED AND FIFTEEN THOUSAND (\$215,000.00) DOLLARS AND NO/100 for its services for said year, subject to the provisions of Section 1, above, paid in equal monthly installments.

2. The VILLAGE shall deposit, on an annual basis, the sum of \$50,000.00 into a VILLAGE reserve account, which shall be used for the purchase of new apparatus and vehicles

for use by the BEC. All said purchases shall be registered, titled, and insured to and by the VILLAGE. The VILLAGE shall appoint a Village Trustee to be a part of the BEC apparatus committee which shall meet and discuss the needs of the BEC with respect to the purchase of any new apparatus and/or vehicles. Any new apparatus and/or vehicles shall be approved by the Village Board of Trustees before any purchase is made. In the event that the **funds** identified in Paragraph 3 and 4 below are extinguished BEC may request that the Village use funds in this capital reserve fund to make repairs to existing fire apparatus in excess of \$10,000.00, should insurance deny said repair.

3. The VILLAGE has, for the past many years, provided the BEC with the sum of \$50,000.00 annually which the BEC was to set aside in a Capital Vehicle Fund and used for the purchase of fire apparatus, to refurbish existing fire apparatus and/or to make emergency repairs to existing fire apparatus in excess of \$10,000.00 should insurance deny said repair.

4. The BEC shall immediately provide an accounting of the funds, including all interest earned, contained within its Capital Vehicle Fund, and shall continue to provide said accounting as to its Capital Vehicle Fund on an annual basis. It is specifically agreed that the BEC may not withdraw any portion of those funds without the specific permission of the VILLAGE. It is also specifically agreed that any new apparatus, vehicles, and/or equipment requested by the BEC shall be purchased first by use of the BEC Capital Vehicle Fund and the VILLAGE shall be responsible for payment of any remaining amount due and owing. From this day forward, any and all apparatus or vehicle purchases made, including by use of the funds contained in the BEC Capital Vehicle Fund, shall be titled, insured, and registered to the VILLAGE who shall become the sole owner of any such purchase.

SECTION 5 -INSURANCE/INDEMNIFICATION

1. The BEC, at its own cost and expense, shall provide a policy or policies of insurance customarily required for each piece of apparatus and equipment currently registered and/or titled to the BEC. Immediately after execution of this Agreement and on an annual basis thereafter, the BEC shall provide to the VILLAGE copies of all current insurance policies, evidencing the amount of coverage and shall name the VILLAGE as an additional insured which shall contain provisions indicating that said policies may not be cancelled without at least thirty (30) days' notice to the BEC and the VILLAGE. The VILLAGE reserves the right to have its own insurance carrier review said insurance and to demand additional coverage if, in the opinion of the VILLAGE insurance carrier, additional coverage is needed to sufficiently protect the VILLAGE. Any and all accidents or incidents concerning current apparatus and/or vehicles shall be reported, via a formal incident report, to the VILLAGE within 48 hours of said incident.

2. The VILLAGE shall remain responsible for providing Volunteer Firefighters' Benefit Law coverage and Worker's compensation insurance for volunteer members for the services to be provided hereunder. In connection with same, the BEC shall report all incidents requiring a claim under the Volunteer Firefighters' Benefit Law or workmen's compensation to the VILLAGE, via a formal Incident Report in a form created by the Village, which shall be provided to the VILLAGE no later than 48 hours after the incident occurs.

3. The VILLAGE shall remain liable for benefits under the Volunteer Firefighter Benefits Law (VFBL) as required by Section 30 of the VFBL for "active members" of the BEC.

4. The VILLAGE shall continue to provide each volunteer member of the BEC with enhanced cancer disability benefits pursuant to GML §205-cc, provided the BEC complies with all requirements of GML § 205-cc.

SECTION 6-ASSIGNMENT

This Contract may not be assigned by the BEC or its right, title and interest therein assigned, transferred, conveyed, sublet, or disposed of without the prior consent, in writing, of the VILLAGE.

SECTION 7-REMEDIES

This Contract may be terminated upon a material breach which remains uncorrected after thirty (30) days written notice to the BEC by the VILLAGE sent by certified mail, return receipt requested. Upon termination, the Department shall remit its pro-rata share of that year's contract funds to the VILLAGE.

SECTION 8- NONDISCRIMINATION

During the term of this Contract, the BEC agrees that in accordance with Article 15 of the Executive law (also known as the Human Rights law) and all other state and federal statutory and constitutional non-discrimination provisions, the BEC will not discriminate against any volunteer or applicant because of race, creed, color, sex, national origin or marital status, **sexual orientation** except as permitted by law. A member of BEC who engages in unlawful conduct identified above is subject to disciplinary action up to and including termination of membership.

SECTION 9-GOVERNING LAW

This Contract and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of New York.

SECTION 10-PARTIAL INVALIDITY

If any term, covenant, condition or provision of this Contract or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions to persons or

circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Contract shall be valid and be enforced to the fullest extent permitted by law.

SECTION 11-ENTIRE AGREEMENT

It is understood that this Contract constitutes the entire agreement between the BEC and the VILLAGE. Should any part of this Contract be declared void by legal ruling, all other parts of this Contract shall remain in effect.

SECTION 12-AMENDMENTS

No agreement, oral or written, respecting this Contract shall be binding upon either party unless in writing, **signed by the parties**, and attached hereto.

SECTION 13-COUNTERPARTS

This Contract is executed in two (2) counterpart originals, each of which shall constitute an original and all of which, when taken together, shall constitute one Contract.

SECTION 14 - RESOLUTION

This contract has been approved by a majority of the Board of the BEC by Resolution adopted in accordance with the BEC By-Laws at either a regular or special meeting.

SECTION 15 - NOTICES

All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing, and shall be deemed duly given if delivered by hand, **e-mail**, or mailed by registered or certified mail, return receipt requested, to the parties at the following address:

Buchanan Engine Co., No 1 Incorporated

Village of Buchanan Board of Trustees
236 Tate Avenue
Buchanan, NY 10511

ATTESTATION CLAUSE

IN WITNESS WHEREOF, the parties have executed this Contract on the date first above written.

THE VILLAGE OF BUCHANAN

BUCHANAN ENGINE CO. NO. 1 INC.

By: _____ By: _____

Theresa Knickerbocker, Mayor

, President

STATE OF NEW YORK)
COUNTY OF WESTCHESTER)

On the _____ day of _____, 2020, before me, the undersigned personally appeared known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her capacity, and that by his/her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF WESTCHESTER)

On the _____ day of _____, 2020, before me, the undersigned personally appeared known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her capacity, and that by his/her signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public