

**SHARED SERVICES AGREEMENT  
BETWEEN  
VALLEY FIRE DISTRICT  
AND  
THE VILLAGE OF BOSTON HEIGHTS, SUMMIT COUNTY, OHIO**

THIS AGREEMENT is made and entered into at Boston Heights, Ohio, by and between the **Valley Fire District**, an Ohio Joint Fire District, Peninsula, Ohio, Summit County, State of Ohio, (hereinafter "**Valley**") in accordance with Resolution No. \_\_\_\_\_ passed by the Valley Fire District on the \_\_\_\_ day of August, 2013, and the **Village Of Boston Heights**, a municipal corporation in Summit County, State of Ohio (hereinafter "**Village**"), in accordance with Resolution No. \_\_\_\_\_ passed by the Council of the Village of Boston Heights on the \_\_\_\_ day of August, 2013.

*WHEREAS*, **Valley** has the capability to provide fire and emergency medical services; and,

*WHEREAS*, **Village** desires to contract for the use of **Valley's** emergency fire and medical and dispatch services and is willing to reimburse **Valley** for the same; and,

*WHEREAS*, **Valley** is willing to provide such services and accept the amount set forth herein as compensation.

*NOW, THEREFORE*, it is agreed between the Parties as follows:

1. **Valley** will furnish the Village fire safety, fire inspection, emergency fire, emergency medical dispatch and related services in accordance with **Valley's** standard operating procedures and the Ohio Department of Public Health and Safety, Division of Emergency Medical Services regulations, and industry practice, on a twenty-four (24) hour-a-day basis, with the basic service to be as follows:

(a) **Valley** shall provide fire safety, fire inspection, emergency fire, and emergency medical and related dispatch services to **Village** for each and every fire, medical or other related call, request or need from within the **Village** through the Initial Term of this Agreement, which shall be for a period of three (3) years, commencing on September 1, 2013 and ending on August 31, 2016. The parties agree that after two (2) years and six (6) months into the Initial Term, authorized representatives of each party shall meet and within sixty (60) days agree in writing to any changes to this Agreement. At the expiration of the Initial Term, the term of this Agreement will automatically extend and renew itself under the same terms and conditions herein for repeating one (1) year terms. The parties agree that after six (6) months into each one (1) year term, authorized representatives of each party shall meet and within sixty (60) days agree in writing to any changes to this Agreement. Any such changes shall be approved by the Valley fire board and the Village Council within the stated sixty (60) day period. Either party may terminate this Agreement by giving one-hundred twenty (120) days written notice of intent to terminate.

(b) Except as provided herein, services pursuant to this Agreement are provided to the **Village** solely pursuant to the policies of **Valley** and industry practice. In the event that any problem, misunderstanding, or concern should arise regarding services provided, the Mayor of the **Village** or the Mayor's designated representative shall meet with **Valley's** board of trustees to resolve any issue.

(c) For the fire safety, fire inspection, emergency fire, emergency medical, dispatch, and/or other services provided herein, **Village** shall pay to **Valley** Two Hundred Forty Thousand dollars (\$240,000.00) per year, payable in four (4) equal installments per year in advance. The invoice, if any, and payment shall be for (i) the provision of fire, emergency medical and dispatch (fire alarm telegraph) services and payment of the personnel required to render such services, (ii) the provision and maintenance of fire safety and paramedic equipment, apparatus, appliances, ambulances and other vehicles, and, (iii) the fire station building site, including repairs, maintenance, and other necessary and/or related upkeep. The first payment shall be made on September 1, 2013 and quarterly thereafter. The yearly payment shall be subject cost of living adjustments as agreed upon by the parties during the yearly meetings contemplated in Section 1(a).

(d) **Valley** shall bear all costs associated with and have exclusive control of the billing and collection of individual rescue users. **Valley** will bill all users in accordance with the then current billing and collection policy of **Valley**. All monies collected shall be paid to **Valley**.

(e) For the purposes of providing services herein, the parties recognize and acknowledge that **Valley** will be providing fire safety, fire inspection, emergency fire, emergency medical, and other services to a broad "Service Area," which includes both the Village of Boston Heights and the Valley Fire District. **Valley** shall staff the **Valley** fire station and the **Village** fire station in a manner that serves the best interests of the entire Service Area and in an even handed fashion throughout each service day based upon call volume and geography, with an intent to provide the best and highest level of service and response times to as many residents and as evenly as possible across the entire Service Area. **Valley** shall staff a minimum of 365 shifts at the Village Fire Station on an annualized basis.

(f) There shall be an ambulance placed at the **Village's** fire station at all times for the purposes of use in providing the emergency medical and other services contemplated in this Agreement.

(g) The services hereunder shall begin and "go live" at 12:01 a.m. on September 1, 2013.

2. The parties agree that neither shall have any liability for any incidental, consequential, indirect, special or exemplary damages or other similar damages arising in connection with this Agreement without regard to the nature of the claim or the underlying theory or cause of action (whether in contract, tort, strict liability, equity or any other theory of law) on which such damages are based, including but not limited to damages sustained or alleged due to any delay in (1) dispatching any responder, (2) arrival at the premises, or, (3) in

servicing the equipment, regardless of whether the damages are due to the sole, joint or several negligence, gross or otherwise, of either **Valley** or the **Village** or their respective agents, servants, employees, suppliers or subcontractors.

3. Any notice, request, demand, or other communication required or permitted hereunder shall be deemed sufficiently given if set forth in writing and sent by e-mail transmission but only with a receipt confirming issuance, (b) a nationally recognized overnight courier with signature receipt, (c) registered mail or certified mail with return receipt requested, provided that postage shall be prepaid, or, (d) facsimile transmission, if evidence of the receipt of such facsimile transmission by the addressee is received by the sender, all of which shall be addressed as follows:

**VILLAGE:**

The Village of Boston Heights  
45 East Boston Mills Road  
Boston Heights, Ohio 44236  
E-mail address: bklingenbergfo@windstream.net  
Fax: 330-655-9578  
Attention: Fiscal Officer

**VALLEY:**

Valley Fire District  
5287 Dogwood Drive  
Peninsula, Ohio 44264  
E-mail address: criedel@valleyfire.us  
Fax:  
Attention: Chief Charlie Riedel

or such other address as the addressee party may have previously designated in writing by notice to the other party.

4. In consideration of the **Village** contracting for the services to be provided by **Valley** and to provide for the orderly transition of services to be provided by **Valley**, **Valley** agrees as follows:

(a) Current members of the **Village's** fire department shall be offered employment with **Valley**. **Village** personnel who wish employment with **Valley** shall be hired as new employees with no preference of seniority. Seniority shall be based on the hire date of the employee. All **Village** employees applying to **Valley** must pass the physical required of all new employees. All employees of **Valley**, whether current members of the **Village's** fire department or not, shall be covered insureds pursuant to the terms of **Valley's** general liability insurance and shall be provided workers compensation coverage by **Valley**.

(b) **Valley** shall perform the services hereunder as an independent contractor and neither its employees nor agents will be deemed to be those of the **Village**. **Valley** will be responsible for the procuring and operation of the vehicles it uses and the employment, training, supervision and control of the drivers and any responders. **Valley** shall be responsible for the safe and lawful operation of the vehicles used in the performance of the services and will keep the vehicles it utilizes in good repair and mechanical condition. No authority has been conferred upon **Valley** by the **Village** to hire any persons on behalf of **Village** and **Valley** assumes full and complete responsibility for selecting, engaging, training and discharging its employees, agents, servants or helpers and for otherwise directing and controlling their services. **Valley** will assume full responsibility for complying with all applicable laws and regulations for the benefit of its employees and under no circumstances will the **Village** be liable for the debts or obligations of **Valley** for the wages, salaries, or benefits of **Valley's** employees.

(c) All members of **Valley** will be assigned shifts based on a member's availability and capability. The more qualified and available a member is the better chance said member has in getting a shift. The parties also anticipate that all **Village** fire department members who become employed by **Valley** can be assigned a minimum of two (2) weekend shifts per month during the Initial Term of this Agreement.

(d) **Valley** shall staff at least one (1) paramedic each shift during which coverage is being provided to the **Village**.

(e) The necessary physicals required for the incoming **Village** fire department members who apply for employment with **Valley** shall be done at University Hospitals (Twinsburg location). No physicals shall be performed elsewhere unless mutually agreed upon by **Valley** and **Village** in writing.

(f) That all **Village** fire department members who become employed by **Valley** who are currently classified as a "first responder" shall be eligible for reimbursement for training to attain the level of "EMT-B" or other approved training in accordance with the policy of **Valley**. At the present time, **Valley** is the recipient of a Federal Grant for training. The Grant is a reimbursement grant, pursuant to the terms of the grant. Once documentation is provided by a member certifying successful completion of the training, said member shall be reimbursed by the **Valley**.

(g) Fire inspection reports being completed by **Valley** for inspections within the **Village** shall be reported to the **Village** mayor (or the Village's designee) on a monthly basis. The originals of such records shall be maintained by **Valley**.

(h) That **Valley** and the **Village** shall enter into lease agreements for the use and occupancy of the Boston Heights Fire Station and for the use of designated equipment currently owned by **Village**. The leases, copies of which are attached as Exhibit "A" and Exhibit "B," shall be executed contemporaneously with this Agreement. The terms of the

attached Agreements are incorporated herein, and default and/or breach of any of these three agreements shall constitute default, breach and/or both under all three of the agreements.

(i) The **Village** shall designate a representative to attend the monthly meetings of **Valley's** fireboard. Said representative shall be provided with all monthly financial reports, minutes, and all written information distributed at the monthly meetings. Said representative shall monitor and check the conditions of the equipment of **Village** that may be used by **Valley** pursuant to this Agreement.

5. **Valley** agrees to indemnify, defend and hold harmless the **Village** from and against all claims, demands, liabilities, damages, losses, expenses, loss or damage including, but not limited to, statutory civil damages, personal injury, death and/or property damage, real or personal, arising out of the services provided hereunder, whether due to the sole, joint or several negligence, gross or otherwise, of the **Village** and/or **Valley**, or any other person, or any of the aforesaid's agents, servants, employees, or subcontractors thereof, breach of contract, express or implied, breach of warranty, express or implied, product or strict liability, and/or any claim for contribution or indemnification, whether in contract, tort or equity, but only to the extent provided and covered by insurance **with a maximum amount of said indemnity being Valley's general liability and/or automobile insurance amount, whichever applies given the circumstances of the claim.**

6. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements, and understandings, whether oral, written, expressed, or implied, with respect to the subject matter hereof.

7. This Agreement may not be assigned or the services hereunder subcontracted to another person, entity or provider by either party without the prior written consent of the other party.

8. This Agreement shall not be subject to modification except by a writing signed by an authorized representative of each party.

9. Any term or provision of this Agreement that is held to be invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

The parties have caused their names to be subscribed by their duly authorized officers in duplicate to this Agreement, each of which shall be deemed an original, the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**VALLEY FIRE DISTRICT**

By its Trustees:

\_\_\_\_\_  
Amy Z. Anderson

\_\_\_\_\_  
Daniel Schneider

\_\_\_\_\_  
Richard Slocum

Approved as to form:

\_\_\_\_\_  
Edward C. Pulekins  
Valley Fire District Legal Counsel

**VILLAGE OF BOSTON HEIGHTS**

BY: \_\_\_\_\_  
Bill Goncy, Mayor

Approved as to form:

\_\_\_\_\_  
Marshal M. Pitchford  
Solicitor, Village of Boston Heights

Fiscal Officer Certificate

The undersigned Fiscal Officer for the Village of Boston Heights, in accordance with Section 57-5.41 of the Ohio Revised Code, hereby certify that the amounts required to meet the obligations of this Contract in the fiscal year in which it was made have been lawfully appropriated for such purposes or are in the process of collection to the credit of an appropriate fund.

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Fiscal Officer

## VILLAGE FIRE STATION LEASE AGREEMENT

THIS BUILDING LEASE AGREEMENT is made and entered into at Boston Heights, Ohio, by and between the Valley Fire District, an Ohio Joint Fire District, Peninsula, Ohio, Summit County, State of Ohio, (hereinafter "Valley") in accordance with Resolution No. \_\_\_\_\_ passed by the Valley Fire District on the \_\_\_\_ day of August, 2013, and the Village of Boston Heights, a municipal corporation in Summit County, State of Ohio (hereinafter "Village"), in accordance with Resolution No. 2013-8-\_\_\_\_, passed by the Council of the Village of Boston Heights on the \_\_\_\_ day of August, 2013.

In consideration of the mutual covenants and provisions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Village and Valley agree as follows:

### 1. **Grant of Lease.**

1.1 Village leases to Valley, and Valley leases from Village, on the terms and conditions set forth in this Lease, a certain portion of Village's real property located in the Village of Boston Heights, County of Summit and State of Ohio, more particularly described as the building, its fixtures, adjacent sidewalks, driveways and parking lot of the Boston Heights Fire Station, (hereinafter the "Premises") for the sole purpose of allowing Valley to provide fire safety, fire inspection, emergency fire, emergency medical, dispatch, EMS, and/or related services to the Village of Boston Heights as set forth in the Shared Services Agreement between Valley and The Village.

1.2 The Premises are subject to zoning and building regulations; all legal highways; and easements, covenants, leases, conditions, reservations and restrictions now of record.

2. **Term.** The term of this Lease shall be for a period of three (3) years, commencing on September 1, 2013 and ending on August 31, 2016 ("Initial Term"). The parties agree that after two (2) years and six (6) months into the Initial Term, authorized representatives of each party shall meet and within sixty (60) days agree in writing to any changes to this Lease. At the expiration of the Initial Term, the term of this Lease shall automatically extend and renew itself under the same terms and conditions herein for repeating one (1) year terms. The parties agree that after six (6) months into each one (1) year term, legally authorized representatives of each party shall meet and within sixty (60) days agree in writing to any changes to this Lease. Any such charges shall be approved by the Valley Fire Board and the Village Council within the stated sixty (60) day period. Either party may terminate this Lease by giving one-hundred twenty (120) days written notice of intent to terminate. Notwithstanding the foregoing, this Lease shall terminate in the event the Premises are no longer used for a public purpose.

3. **Rent.** Valley shall pay to the Village upon the Effective Date the aggregate rent of Twenty Thousand dollars (\$20,000.00) per year, payable in four (4) equal installments per year in



advance. The first payment shall be made on September 1, 2013 and quarterly thereafter. The yearly payment shall be subject cost of living adjustments as agreed upon by the parties. In the event of a Renewal Term, the rent shall not be increased. In addition, Valley shall contribute to the cost of utilities as described in Section 6.

#### **4. Use of Premises.**

- 4.1 Valley shall use and occupy the Premises for the sole purpose of operating and providing fire, emergency medical and safety services, and for no other purposes without the written consent of the Village.
- 4.2 Valley shall (i) operate the Premises at all times in a reasonable, safe and reputable manner, and (ii) keep or cause to be kept the Premises and improvements thereon in a neat, clean, sanitary and attractive condition.
- 4.3 For the purposes of providing fire, medical emergency and dispatch services, the parties recognize and acknowledge that Valley will be providing fire and emergency medical services to a broad "Service Area," which includes both the Village of Boston Heights and the Valley Fire District. Valley shall staff the Valley fire station and the Village fire station in a manner that serves the best interests of the entire Service Area and in an even handed fashion throughout each service day based upon call volume and geography, with an intent to provide the best and highest level of service and response times to as many residents and as evenly as possible across the entire Service Area. There shall also be an ambulance placed at the Village's fire station for use in the provision of the emergency medical services contemplated in the Shared Services Agreement, executed contemporaneously with this Lease.
- 4.4 Valley acknowledges that it has inspected the Premises, and accepts the same in its "AS IS" present condition.
- 4.5 Valley's use of the Premises is co-possessory with Village. At all times, Village officials, who for this Section shall include the Mayor, members of Council, the Fiscal Officer, and those designated in writing by the Mayor, shall have full access to the Premises, and the Premises shall otherwise be open to the public as standard safety and security precautions might otherwise dictate. The Premises shall be open to use by the Village for official Village meetings as the Village designates. From time to time, the Village utilizes the Premises for special events, including but not limited to public gatherings, meetings, parades, dinners, parties or other similar events. Village shall provide reasonable notice of such special events the Chief of the Valley Fire District, which is intended to give Valley sufficient time to prepare. All requests for such special meetings shall be directed and administered to Village, which in turn shall be forwarded to the Chief of the Valley Fire District.

- 4.6 Village shall be responsible for snow and ice removal on the Premises' driveway, sidewalks and parking lot. In the event Valley finds the condition of the Premises' driveway, sidewalks and/or parking lot unacceptable for any reason, it has the right and ability to clear and remove any snow and ice on such surfaces.
- 4.7 Village shall be responsible for maintaining the yard and land surrounding the Premises. This includes the Village's responsibility to mow and keep the grass in an attractive condition.
5. **Compliance with Laws.** Valley, at its sole expense, shall comply with all present and future laws and regulations applicable to its use and occupancy of the Premises, and shall make any repairs, modifications or additions to the Premises that may be required by any of those laws or regulations.
6. **Utilities, Taxes, Etc.**
- 6.1 Any new or additional relocation, removal or connection of public or private utilities arising from this Agreement shall be done at the Valley's expense.
- 6.2 Village shall be responsible for paying the cost of utilities on a month by month basis, or as required. At the end of the initial year, and at the end of each successive year (September 1 through the following August 31), Valley agrees to pay Village for the increased costs in public utility services rendered or furnished to Valley within the Premises during the applicable year, including, without limitation, water, gas, electric services, communications services and sewer, together with all taxes, levies or other charges on such utilities. This figure shall be determined by the parties' mutual agreement within sixty (60) days after the end of each year. If no agreement is reached, Valley shall be obligated to pay half of the increased costs in total utilities over the last six (6) months before the end of the year for which payment is due.
7. **Law and Ordinances.** Valley shall abide by and obey all laws and ordinances.
8. **Indemnification and Limitation on Damages.**
- 8.1 To the extent allowed by Ohio law, Valley agrees to indemnify, defend, and save harmless Village, its employees, agents, contractors, and assigns from all claims and lawsuits of any kind arising from this Lease to the extent said claims or lawsuits are covered by Valley's insurance and only to the extent of said insurance, if any. Nothing herein shall be construed to make Valley liable for the negligence of Village, or the Village liable for any conduct on the part of Valley.
- 8.2 The parties agree that neither shall have any liability for any incidental, consequential, indirect, special or exemplary damages or other similar damages arising in connection with this Lease without regard to the nature of the claim or the underlying theory or cause of action (whether in contract, tort, strict liability,

equity or any other theory of law) on which such damages are based, including but not limited to damages sustained or alleged due to any delay in (1) dispatching any responder, (2) arrival at the Premises, or, (3) in servicing any equipment, regardless of whether the damages are due to the sole, joint or several negligence, gross or otherwise, of either Valley or the Village or their respective agents, servants, employees, suppliers or subcontractors except as provided in Sections 8.1 and 17.

9. **Insurance.** Valley shall obtain and provide acceptable evidence of a commercial general liability insurance policy or self-insurance, in the amount of One Million Dollars (\$1,000,000.00) per occurrence, with the Village being listed as an additional named insured for injuries, claims, or losses, including those that result in injury, death or property damages arising from the Valley's use of the Premises. Village shall obtain and provide acceptable evidence of a commercial general liability insurance policy or self-insurance, in the amount of One Million Dollars (\$1,000,000.00) per occurrence, or more, for injuries, claims, or losses, including those that result in injury, death or property damages arising from the Village's sole negligence in its use of the Premises. All coverages purchased by Valley shall be primary for any loss described above arising out of the use of the Premises.

10. **Maintenance.**

10.1 **Valley's Repairs.** Valley shall furnish at its sole cost and expense all services and facilities and make any repairs or replacements on or to the Premises which are deemed necessary or desirable by Valley or which are necessary to maintain the Premises in reasonably good condition, subject to normal wear and tear.

10.2 **Village's Repairs.** Except as to any replacement item that relates strictly to a structural support, the heating, air conditioning and ventilation system or the fire station roof whose replacement is not related in any fashion to the acts or omissions of Valley, Village shall not be required to furnish any services or to make any repairs, alterations, replacements, additions or improvements in or to the Premises during the term of the Lease, except to the extent the repair, alteration, replacement or addition is required due to Village's sole negligence.

11. **Improvements by Valley.** After prior written notice is given to the Mayor of Boston Heights and upon his or her written approval, Valley shall have the right to make such alterations, additions or improvements to the Premises as it considers necessary or desirable to construct, maintain and operate the station. All alterations, additions or improvements made to the Premises by Valley pursuant to this Lease shall remain the property of the Valley during the Term of this Lease. Upon termination or expiration of the Term of this Lease, any alterations, additions or improvements made to the Premises by Valley which are permanently installed and affixed to the Premises shall become the property of Village, and all removable equipment and improvements shall remain the property of the Valley and may be removed at the termination or expiration of the Lease.

12. **Identification Signs.** Valley shall not be permitted to place identification and instructional signs on the Premises, unless agreed to in writing by the Village of Boston Heights. In addition to any approval required from the Village Planning Commission, the Board of Zoning Appeals, and/or the Zoning Inspector, all signs must be approved in writing by the Mayor of the Village of Boston Heights, or his designee, which approval may not be unreasonably withheld or delayed.
13. **Damage and Destruction.** If during the Term of this Lease, the Premises, or any portion thereof, are so damaged by fire or other casualty as to be rendered untenable in whole or in substantial part, then Valley may terminate this Lease effective the date of such casualty. The election by Valley shall be made within one-hundred twenty (120) days after the occurrence of the casualty, or shall be deemed waived.
14. **Default.**
- 14.1 **Valley's Default.** Valley shall be in default of this Lease if Valley fails to perform any duty or obligation imposed by this Lease or the Shared Services Agreement or the Village Equipment Lease Agreement and the default continues for a period of thirty (30) days after written notice is given to Valley by Village, or for an unreasonable period of time if thirty (30) days is not sufficient time to repair, remedy or correct such default.
- 14.2 **Village's Default.** Village shall be in default of this Lease if Village fails to perform any duty or obligation imposed by this Lease and the default continues for a period of thirty (30) days after written notice is given to Village by Valley, or for an unreasonable period of time if thirty (30) days is not sufficient time to repair, remedy or correct such default.
- 14.3 **Remedies.** In the event of Valley's default which is not cured pursuant to Section (14.1) herein, the Village shall have the right to enter upon the Premises and repossess and enjoy the same as if this Lease had not been made, and, upon demand by Village, Valley shall surrender complete and peaceable possession of the Premises. This Lease shall then terminate. In the event of Village's default which is not cured pursuant to Section (14.2) herein, the Valley shall have the right to terminate this Lease with ninety (90) additional days written notice.
- 14.4 **Right to Cure.** Without limiting any other remedy available to Village or Valley, in the event a party defaults in the performance of any of its obligations, the non-defaulting party may, at its option (but without any obligation so to do), do all things as it deems necessary and appropriate to cure the default, perform for the defaulting party any obligation which the defaulting party is obligated to perform but has not performed, and expend such sums as may be required. All costs and expenses so incurred by the non-defaulting party shall be due and payable to non-defaulting party immediately upon demand.
- 14.5 **Remedies not Exclusive.** The rights and remedies of the parties herein are not exclusive. The parties herein shall have all other rights, remedies, liens, penalties,

proceedings or courses of action available to Village or Valley at law or in equity under the laws of the State of Ohio.

**15. Assignment.**

15.1 Valley shall not have the unilateral right to assign its interest under this Lease. The rights herein conferred herein are the privileges of Valley only, and Valley shall obtain Village's prior written consent to any assignment of Valley's interest herein.

15.2 This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

15.3 In the event of any unauthorized assignment of this Lease, or any of the rights and privileges hereunder, Village, at its option, may revoke this Lease by giving Valley or any such assignee written notice of such revocation; and, Valley shall reimburse Village for any loss, cost or expense Village may incur as a result of Valley's failure to obtain said consent.

**16. Quiet Enjoyment.** Village covenants that it has the full right and authority to make this Lease and that if Valley pays the rent and performs all of the terms of this Lease, Valley shall peaceably and quietly enjoy and possess the Premises throughout the term, subject only to the conditions set forth in this Lease.

**17. Personal Property.** Valley agrees that all fixtures and personal property belonging to Valley, the public, or Valley's employees, invitees or contractors, and which may at any time be in or on the Premises, shall be at the risk of the owner of such personal property, and that Village shall not be liable for any damage to said property caused in any manner whatsoever, except to the extent the damage is caused by the Village's negligence or willful act.

**18. Waiver.** No waiver of any condition or covenant of this Lease by either party shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Lease shall be construed to be a waiver on the part of Village of any right or remedy in law or otherwise.

**19. Surrender.** Valley covenants and agrees to deliver up and surrender to Village the possession of the Premises upon the expiration of this Lease, or other termination, as herein provided, in the condition to which the Premises has been improved and maintained.

**20. Severability.** If any provision of this Lease or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

21. **Liens.** Valley shall keep the Premises free and clear of all mechanic's liens resulting from the work done by or for the Valley. If any mechanic's liens are filed against the Premises as a result of or purporting to be the result of any work for or act of Valley, Valley shall promptly discharge the lien by payment or by notice and bond meeting the requirements of the Ohio Revised Code.

22. **Notices.**

22.1 All notices and communications concerning this Agreement shall be addressed to Village and Valley at the addresses set forth below or at such other address as either party may designate in writing to the other. All notices should be addressed as follows:

If to Village:

Village of Boston Heights  
45 East Boston Mills Road  
Boston Heights, Ohio 44236  
Attn: Fiscal Officer, Betty Klingenberg

And if to Valley:

Valley Fire District  
5287 Dogwood Drive  
Peninsula, Ohio 44264  
Attention: Chief Charlie Riedel

22.2 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered effective upon: (a) actual receipt, or, (b) date of refusal of such delivery.

23. **Governing Law.** This Lease and all the terms and provisions hereof shall be construed and enforced in accordance with the laws of the State of Ohio.

24. **Captions.** The captions of this Lease are for convenience of reference only and shall not be considered in the construction of any provisions of this Lease.

25. **Entire Agreement.** This Lease contains the entire agreement between the parties and supersedes all prior understandings, except as provided in the Shared Services Agreement and Equipment Lease which are being executed contemporaneously herewith. No amendment to this Lease shall be valid unless in writing and executed by the party against whom enforcement of the amendment is sought.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and the place first above written.

**THE VILLAGE OF  
BOSTON HEIGHTS**

**VALLEY FIRE DISTRICT**

By: \_\_\_\_\_  
Bill Goncy, Mayor

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approved as to form and correctness:

Approved as to form and correctness:

\_\_\_\_\_  
Marshal M. Pitchford  
Solicitor  
Village of Boston Heights

\_\_\_\_\_  
Edward C. Pullekens  
Valley Fire District Legal Counsel

## **VILLAGE EQUIPMENT LEASE AGREEMENT**

THIS EQUIPMENT LEASE is made and entered into at Boston Heights, Ohio, by and between the **Valley Fire District**, an Ohio Joint Fire District, Peninsula, Ohio, Summit County, State of Ohio, (hereinafter "**Valley**") in accordance with Resolution No. \_\_\_\_\_ passed by the Valley Fire District on the \_\_\_\_ of August, 2013, and, the **Village Of Boston Heights**, a municipal corporation in Summit County, State of Ohio (hereinafter "**Village**"), in accordance with Resolution No. 2013-8-\_\_\_\_, passed by the Council of the Village of Boston Heights on the \_\_\_\_ day of August, 2013.

**1. Lease Term.** The term of this shall be for a period of three (3) years, commencing on September 1, 2013 and ending on August 31, 2016 ("Initial Term"). The parties agree that after two (2) years and six (6) months into the Initial Term, authorized representatives of each party shall meet and within sixty (60) days agree in writing to any changes to this Lease. At the expiration of the Initial Term, the term of this Lease shall automatically extend and renew itself under the same terms and conditions herein for repeating one (1) year terms. The parties agree that after six (6) months into each one (1) year term, legally authorized representatives of each party shall meet and within sixty (60) days agree in writing to any changes to this Lease. Either party may terminate this Lease by giving one-hundred twenty (120) days written notice of intent to terminate.

**2. Lease of Equipment.** Upon the terms and conditions of this Lease, Village hereby leases to Valley and Valley hereby leases from Village all the personal property (herein referred to as the "Equipment") described on Schedule "A," attached hereto and incorporated herein by reference, for the purpose of fulfilling the requirements of the Shared Services Agreement between Valley and Village.

**3. Rent.** For the Equipment provided for herein, Valley shall pay to Village Twenty Thousand dollars (\$20,000.00) per year, payable in four (4) equal installments per year in advance. The first payment shall be made on September 1, 2013 and quarterly thereafter. The yearly payment shall be subject as to cost of living adjustments as agreed upon by the parties.

**4. Location, Identification, and Inspection of Equipment.** Valley shall house the Equipment at either the Village's or Valley's fire station, as necessary to meet the best interests of the entire "Service Area", which includes both the Village of Boston Heights and the Valley Fire District, and provide safety services in an even handed fashion throughout each service day based upon call volume and geography, with an intent to provide the best and highest level of service and response times to as many residents and as evenly as possible across the entire Service Area. Valley shall not remove the Equipment from such locations with the intent to house elsewhere without Village's prior written consent. At any reasonable time during normal business hours, Village may inspect the Equipment and, further, may place insignia or other lettering on the Equipment to indicate Village's ownership thereof. Valley shall properly notify Village of any circumstances or events which may in any manner affect the Equipment or Village's title thereto.

**5. Use and Maintenance of Equipment.**

5.1 Valley shall use the Equipment solely in the conduct of Valley's efforts to provide



fire, medical and safety and related services to the residents of the Village and/or Valley, in a careful and proper manner, by individuals competent to operate the Equipment, and only for purposes for which the Equipment was designed. Valley shall comply with all statutes, laws, ordinances and regulations pertaining to the possession, use and/or maintenance of the Equipment. Valley shall also comply with all restrictions and obligations imposed upon Village with respect to the use or maintenance of the Equipment under agreements with the manufacturer or distributor of the Equipment, including (but not limited to) patent and copyright restrictions. Valley shall not permit or acquiesce in use of the Equipment in any way other than as provided in this Section 5.1.

5.2 At Valley's cost and expense, Valley shall: (a) be responsible for and pay any and all expenses of operating the Equipment; (b) keep the Equipment in good repair, condition and working order; and, (c) furnish any and all parts, replacements, accessories and labor required to maintain, operate and repair the Equipment. The requirements of this Section 5.2 shall not apply during the Initial Term if the required repair, replacement and/or labor of an item of equipment is a material repair that exceeds Ten Thousand Dollars (\$10,000.00) in total costs. In that event, the Village will be responsible for payment of the costs.

5.3 Without Village's prior written consent, Valley shall make no material alterations or additions to the Equipment. Any additions, alterations, accessories, parts or replacements added or attached to the Equipment shall immediately become solely Village's property and shall be deemed incorporated into the Equipment and subject to the terms and conditions of this Equipment Lease Agreement, as if originally leased hereunder.

5.4 Without Village's prior written consent, Valley shall not: (a) sublease the Equipment or permit the Equipment to be used by any person or entity other than Valley or Valley's employees; or, (b) grant a license covering the Equipment (or any part thereof); or, (c) assign or transfer this Equipment Lease Agreement (or any interest hereunder) or the Equipment; or, (d) mortgage, pledge or otherwise encumber this Equipment Lease Agreement or the Equipment or Valley's leasehold interest therein or Valley's interest in this Equipment Lease Agreement; or, (e) relinquish control or possession of the Equipment. The transfer or assignment (whether by sale, gift or other means) of an ownership interest in Valley such that control of Valley is assumed by any party or parties other than those in control of Valley upon commencement of the Lease Term shall constitute a violation of this Section 5.4.

## **6. Loss and Damage to Equipment.**

6.1 Upon delivery of the Equipment to Valley, Valley shall assume the entire risk of loss, theft, damage or destruction of the Equipment from any and all causes whatsoever. No such loss, theft, damage or destruction shall impair, reduce or relieve Valley's obligations, Rent payments, duties, responsibilities and/or covenants under this Equipment Lease Agreement, which shall continue in full force and effect.

6.2 If any Equipment item is damaged in any manner by Valley or while in use by Valley, Valley shall immediately place the Equipment item in good repair, condition and working order (at

Valley's sole expense). If any Equipment item is lost, destroyed, stolen or damaged beyond repair, Valley shall (at Village's option), within thirty (30) days after said loss, theft, destruction or damage, either: (a) replace the Equipment with like equipment of the same make and model in substantially the same condition as the Equipment prior to the loss, theft, destruction or damage; or, (b) pay Village the fair market value of said Equipment prior to the loss, theft, destruction or damage as reasonably determined by Village.

**7. Insurance, Indemnification and Limitation of Damages.**

7.1 At Valley's expense, Valley shall keep the Equipment insured (during the entire Lease Term, time being of the essence) against damage, theft, loss and other casualty for not less than the full replacement value thereof as determined by Village. Valley shall also obtain and maintain (during the entire Lease Term, time being of the essence) public liability and property damage insurance (including, but not limited to, coverage against claims of employees for intentional tort or negligence) in the amount of One Million Dollars (\$1,000,000.00) upon the Equipment. The Village shall be listed as an additional named insured for injuries, death and/or property damages. Said policies of insurance shall be primary over any other policies or coverages which may be available to cover any loss described herein.

7.2 Valley shall purchase all insurance required hereunder in such form, with such coverage, in such amount and with such companies as approved by Village and shall designate Village and/or a lender as may be required by financing arrangements as an additional named insured and loss payee (with respect to casualty insurance) under such insurance to the extent of Village's interest in the Equipment. Such insurance shall also provide that Village shall be notified at least thirty (30) days prior to any cancellation or material reduction of such insurance.

7.3 At Village's option, all proceeds of such insurance shall be applied: (a) to the replacement, restoration or repair of the Equipment, and/or, (b) to the payment of Valley's obligations hereunder. Valley hereby appoints Village as Valley's irrevocable attorney-in-fact to make claim for, receive payment of and/or execute and endorse all documents, checks or drafts for loss or damage under any such insurance policy. In the event of a complete loss of a fire engine or vehicle where such equipment is unable to return to service permanently, the parties shall meet and agree to an alternative service plan or adjust this Lease, the Shared Services Agreement, and Fire Station Lease which are being executed contemporaneously herewith.

7.4 Valley hereby agrees to defend, indemnify and hold Village harmless from and against any and all alleged, claimed or actual injuries, damages, actions, causes of action, claims, demands, liabilities, costs (including, but not limited to, court costs and attorneys' fees), expenses, fines, penalties or other charges, directly or indirectly arising from or associated with Valley's possession and/or use of the Equipment or Valley's breach of this Equipment Lease Agreement. This Section 7.4 allows for indemnity only to the extent said claims are covered by Valley's insurance, as required in this Lease, and only to the extent of said insurance. This limitation on indemnity does not limit the Valley's obligations as set forth in Sections 5, 6, and/or 8.

7.5 The parties agree that neither shall have any liability for any incidental,

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consequential, indirect, special or exemplary damages or other similar damages arising in connection with this Lease without regard to the nature of the claim or the underlying theory or cause of action (whether in contract, tort, strict liability, equity or any other theory of law) on which such damages are based, including but not limited to damages sustained or alleged due to any delay in (1) dispatching any responder, (2) arrival at any premises, or, (3) in servicing the Equipment, regardless of whether the damages are due to the sole, joint or several negligence, gross or otherwise, of either Valley or the Village or their respective agents, servants, employees, suppliers or subcontractors, except as provided in Section 7.4.

**8. Taxes and Encumbrances.** Valley shall keep the Equipment free and clear of all levies, liens and encumbrances and shall pay all license fees, registration fees, assessments, charges and taxes (municipal, state and federal) imposed upon the ownership, leasing, renting, sale, possession or use of the Equipment.

**9. Valley's Default.**

9.1 Valley's Default. Valley shall be in default of this Lease or the Shared Services Agreement or the Village Fire Station Lease Agreement if Valley fails to perform any duty or obligation imposed by this Lease or the other Agreements and the default continues for a period of thirty (30) days after written notice is given to Valley by Village, or for an unreasonable period of time if thirty (30) days is not sufficient time to repair, remedy or correct such default.

9.2 Village's Default. Village shall be in default of this Lease if Village fails to perform any duty or obligation imposed by this Lease and the default continues for a period of thirty (30) days after written notice is given to Village by Valley, or for an unreasonable period of time if thirty (30) days is not sufficient time to repair, remedy or correct such default.

9.3 Remedies. In the event of Valley's default which is not cured pursuant to Section (9.1) herein, the Village shall have the right to repossess and enjoy the Equipment as if this Lease had not been made, and, upon demand by Village, Valley shall surrender complete and peaceable possession of the Equipment. This Lease shall then terminate. In the event of Village's default which is not cured pursuant to Section (9.2) herein, Valley shall have the right to terminate this Lease with ninety (90) additional days written notice.

9.4 Right to Cure. Without limiting any other remedy available to Village or Valley, in the event a party defaults in the performance of any of its obligations, the non-defaulting party may, at its option (but without any obligation to do so), do all things as it deems necessary and appropriate to cure the default, perform for the defaulting party any obligation which the defaulting party is obligated to perform but has not performed, and expend such sums as may be required. All costs and expenses so incurred by the non-defaulting party shall be due and payable to non-defaulting party immediately upon demand.

9.5 Remedies not Exclusive. The rights and remedies of the parties herein are not exclusive. The parties herein shall have all other rights, remedies, liens, penalties, proceedings or courses of action available to Village or Valley at law or in equity under the laws of the State of Ohio.

**10. Possession and Use.** Village represents, warrants, covenants and agrees that Village is the lawful owner of the Equipment and that, upon Valley's continued compliance with each and every term and condition of this Equipment Lease Agreement, Valley shall peaceably and quietly hold, possess and use the Equipment during the Lease Term without hindrance.

**11. Exclusion of Warranties.**

11.1 Valley hereby acknowledges and agrees that VILLAGE HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, QUALITY, DURABILITY, CAPABILITY OR SUITABILITY OF THE EQUIPMENT. Valley hereby releases and holds Village harmless from any and all claims, actions, causes of action, demands and liabilities arising directly or indirectly from the condition, quality, durability, capability or suitability of the Equipment or from Valley's possession and use of the Equipment.

11.2 In addition to (but not in limitation of) the foregoing, VILLAGE MAKES NO WARRANTIES OR REPRESENTATIONS CONCERNING THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR A PARTICULAR PURPOSE OR FOR ANY PURPOSE.

11.3 Valley has thoroughly examined the Equipment and hereby accepts the equipment in an "AS IS" condition upon delivery.

**12. Termination and Redelivery.** Upon termination of this Equipment Lease Agreement for any reason, Valley shall (at Valley's own cost and expense) return the Equipment to the location specified by Village in the same condition as Valley received the Equipment upon commencement of the Lease Term, reasonable wear and tear and normal depreciation excepted.

**13. True Lease**

14.1 This is a true lease and not a security or financing arrangement. Valley shall have no option to purchase the Equipment.

**14. Miscellaneous.**

14.1 This Agreement shall be governed by and interpreted under Ohio law.

14.2 All provisions of this Equipment Lease Agreement are severable and no provision hereof shall be affected by the illegality, unenforceability, or invalidity of any other provision hereof.

14.3 This Agreement may be amended only by a written document signed by both

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Village and Valley.

14.4 The failure of Village to enforce any rights hereunder or Village's acceptance of any Rent hereunder shall not constitute a waiver of any default by Valley hereunder and shall not constitute a modification of this Equipment Lease Agreement or evidence of any reduction of any rights of Village hereunder.

14.5 For purposes of this Equipment Lease Agreement, the singular includes the plural and vice-versa and the feminine, masculine and neuter include each other.

14.6 Notices. All notices and communications concerning this Agreement shall be addressed to Village and Valley at the addresses set forth below or at such other address as either party may designate in writing to the other. All notices should be addressed as follows:

If to Village:

Village of Boston Heights  
45 East Boston Mills Road  
Boston Heights, Ohio 44236  
Attn: Fiscal Officer, Betty Klingenberg

And if to Valley:

Valley Fire District  
5287 Dogwood Drive  
Peninsula, Ohio 44264  
Attention: Chief Charlie Riedel

Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered effective upon: (1) actual receipt, or, (b) date of refusal of such delivery.

14.7 The captions of this Lease are for convenience of reference only and shall not be considered in the construction of any provisions of this Lease.

14.8 This Lease contains the entire agreement between the parties and supersedes all prior understandings, except as provided in the Shared Services Agreement and Fire Station Lease which are being executed contemporaneously herewith. No amendment to this Lease shall be valid unless in writing and executed by the party against whom enforcement of the amendment is sought.

The parties have caused their names to be subscribed by their duly authorized officers in duplicate to this Agreement, each of which shall be deemed an original, the \_\_\_\_ day of \_\_\_\_\_, 2013.

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**VALLEY FIRE DISTRICT**

By its Trustees:

\_\_\_\_\_  
Amy Z. Anderson

\_\_\_\_\_  
Daniel Schneider

\_\_\_\_\_  
Richard Slocum

Approved as to form:

\_\_\_\_\_  
Edward C. Pullekens  
Valley Fire District Legal Counsel

**VILLAGE OF BOSTON HEIGHTS**

By: \_\_\_\_\_  
Bill Gony, Mayor

Approved as to form:

\_\_\_\_\_  
Marshal M. Pitchford  
Solicitor, Village of Boston Heights

**SCHEDULE A TO EQUIPMENT LEASE AGREEMENT**

**Description**

**Model**

**Serial #**