

RESOLUTION NO. 2015244

RE: AUTHORIZING AGREEMENT FOR THE PROVISION OF
ADDITIONAL POLICE PROTECTION SERVICES BY
THE DUTCHESS COUNTY SHERIFF TO FIRE DISTRICTS

Legislators ROMAN, ROLISON, FLESLAND, BOLNER, SAGLIANO, WEISS, and JETER-JACKSON offer the following and move its adoption:

WHEREAS, General Municipal Law Section 119-o authorizes municipal corporations to enter into an agreement for the performance among themselves or one for the other in their respective functions, powers and duties on an individual, cooperative, joint or contract basis, and

WHEREAS, General Municipal Law Section 119 defines "municipal corporation" as a town or fire district or school district, among other things, and

WHEREAS, pursuant to General Municipal Law Section 119-o, municipal corporations, as defined above, may request additional police services which are more intensive than usually and normally supplied by the Dutchess County Sheriff and involve a greater County outlay in money, personnel and equipment, and

WHEREAS, pursuant to General Municipal Law Section 119-o and Section 209-m provides that the County may be reimbursed by the requesting municipal corporations, as defined above, for the cost of such additional police services provided by the Sheriff, and

WHEREAS, several municipal corporations, school districts and a fire district within the County require additional police services and have requested the Sheriff to provide such services, and

WHEREAS, the provision of such additional police services will be more intensive than is usually and normally supplied by the Sheriff and will involve a greater County outlay in money, personnel, and equipment, and

WHEREAS, Town Law Section 176(21) provides that fire district commissioners have the powers conferred upon the fire district and that the fire districts are impliedly authorized to hold safe and orderly meetings, and therefore, are impliedly legally authorized to retain police services, and

WHEREAS, the attached agreement is proposed for use for fire districts requesting such services, and sets forth the terms and conditions for such additional police services and reimbursement therefore, and

WHEREAS, it is necessary for the Legislature to approve municipal corporation or fire district agreements, and to authorize the County Executive or his designee to execute the above agreement, now, therefore, be it

RESOLVED, that this Legislature hereby approves the proposed fire district agreement authorizing the Sheriff to provide additional police protection services to those fire districts which require such services and further authorizes the County Executive or his designee to execute such agreements in substantially the same form as attached hereto.

CA-152-15
CRC/kvh/G-0224
9/15/2015

Fiscal Impact: None. County to be reimbursed actual expenses.

FISCAL IMPACT STATEMENT

NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS *(To be completed by requesting department)*

Total Current Year Cost \$ _____

Total Current Year Revenue \$ _____
and Source

Sheriff - Security Other Gov't, Sheriff Fees Other Government
A.3110.26.15100.03

Source of County Funds *(check one)*: Existing Appropriations, Contingency,
 Transfer of Existing Appropriations, Additional Appropriations, Other *(explain)*.

Identify Line Items(s):

Related Expenses: Amount \$ _____

Nature/Reason:

Anticipated Savings to County: _____

Net County Cost (this year): \$0 _____

Over Five Years: _____

Additional Comments/Explanation:

Per the agreement for security services, the East Clinton Fire District will pay the actual cost of the Deputy Sheriff assigned plus fringe, administrative fees, and mileage. The costs will be covered through the end of the year with existing appropriations, and will be completely offset by revenue from the municipality.

Prepared by: Rachel Kashimer, Budget Office

Prepared On: 8/26/2015

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, _____, by and between the **COUNTY OF DUTCHESS**, a municipal corporation with offices at 22 Market Street, Poughkeepsie, New York 12601 (hereinafter referred to as the "COUNTY") and XXXXXXXXXXXXX, a municipal corporation, whose address is XXXXXXXXXXXXX (hereinafter referred to as the "FIRE DISTRICT") and **ADRIAN H. ANDERSON, the SHERIFF OF THE COUNTY OF DUTCHESS**, with offices at 150 North Hamilton Street, Poughkeepsie, New York 12601 (hereinafter referred to as the "SHERIFF").

WITNESSETH:

WHEREAS, the Fire District has requested that the County of Dutchess authorize the Sheriff of Dutchess County to provide extra police services, over and above the police protection budgeted and allocated for the Fire District, and

WHEREAS, the Fire District understands that such police service may require the appointment of Deputy Sheriffs on an overtime basis and must comply with the Fair Labor Standards Act and the current Agreement between the County of Dutchess, the Dutchess County Sheriff and the Deputy Sheriff's P.B.A., Inc., and be subject to the further condition that Deputy Sheriffs are available for the overtime employment as the Fire District schedules with the Sheriff, and

WHEREAS, General Municipal Law Section 119-o authorizes municipal corporations to enter into agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a contract basis, and

WHEREAS, General Municipal Law §119-n defines "municipal corporation" as town or fire district or School District, among other things, and

WHEREAS, Town Law §176(21) provides that the fire district commissioners: shall have and exercise all the powers conferred upon the Fire District and such additional powers as shall be necessarily implied therefrom" and that the fire districts are authorized to hold meetings and, therefore, are impliedly authorized to hold safe and orderly meetings, and, therefore are impliedly legally authorized to retain police services, and

WHEREAS, the Fire District agrees to pay the cost set forth in the administrative fee schedule attached hereto and made a part hereof in connection with the provision of the additional police protection services, and

WHEREAS, the Dutchess County Legislature has approved Agreements of this nature by Resolution No. _____, now, therefore, it is mutually agreed by and between the parties hereto as follows:

1. SCOPE OF SERVICES. The County and the Sheriff agree to furnish police protection services including personnel, equipment and supplies in excess of that which is usually and normally furnished by the Sheriff's Office to the Fire District, as follows:

- (a) The Sheriff and the Fire District shall arrange for the additional police protection to be provided to the Fire District by the Sheriff. The Fire District shall give the Sheriff one week's advance notice of any change to the dates and times it seeks the additional police protection. The Sheriff shall designate an individual from his department and the Fire District shall designate a representative to make or receive the requests for additional police protection or to confer upon matters concerning the delivery of such services.
- (b) The Sheriff shall provide sufficient Deputy Sheriffs and patrol cars to patrol the Fire District during the scheduled hours, which shall constitute the additional protection. The Sheriff, in his sole discretion, shall determine the number of personnel, equipment and supplies necessary to provide the additional police protection requested. In the event the Fire District seeks additional protection not previously scheduled, the Fire District shall so notify the Sheriff as set forth in paragraph "1(a)." In the event the Sheriff is unable to provide the additional police protection requested and/or scheduled by the Fire District, the Sheriff shall so notify the Fire District.
- (c) The Sheriff shall provide additional police protection within the boundaries of the Fire District during scheduled hours. Only emergencies (as determined by the Sheriff's Department), the pursuit of a violator or the processing of persons arrested will result in an officer being outside the Fire District during scheduled hours. The Fire District shall be credited for any time when a scheduled Deputy Sheriff is required to leave the Fire District to assist in an emergency unrelated to the police services provided to the Fire District.
- (d) The Sheriff shall enforce State statutes and local laws.
- (e) The planning, organization, scheduling, direction and supervision of the Sheriff's personnel and all other matters incident to the delivery of additional police protection to the Fire District shall be as determined by the Sheriff. The Sheriff shall retain exclusive authority over the activities of his personnel working in the Fire District.
- (f) Any conflict between the Fire District and the Sheriff regarding the extent or manner of performance of additional police protection delivered to the Fire District shall be resolved by the Sheriff, whose decision shall be final and conclusive.
- (g) It is understood that this additional coverage will in no way diminish the regular patrols customarily provided outside this contract for the Fire District by the Sheriff's Department.

2. EQUIPMENT AND FACILITIES.

- (a) Except as otherwise stipulated, the County and the Sheriff shall furnish all personnel, equipment and supplies required to provide additional police protection to the Fire District.
- (b) The County and the Fire District shall retain title to the property each may require to fulfill its obligations under this Agreement. Upon the termination of this Agreement, each party may dispose of its property as it sees fit.

3. TERM OF AGREEMENT. This Agreement shall be effective xx xx, 20xx and shall terminate on xx xx, 20xx, unless otherwise terminated as set forth herein.

4. PAYMENT. As full and complete consideration for the services so rendered, the Fire District shall pay a total sum not to exceed xx THOUSAND and 00/100 (\$xx,000.00) DOLLARS, per the attached 2015 Administrative Fee Schedule.

5. LIABILITY.

- (a) County: The County shall assume liability for, defend against, and secure the Fire District from all cost or damages for injury to persons or property, or death, caused by the negligent acts of any employees of the Sheriff and arising out of the performance of this Agreement. The County maintains general liability and police professional insurance and shall name the Fire District as additional insured on such policies for the services provided under this Agreement.
- (b) Fire District: The Fire District shall assume liability for, defend against, and exempt the County and the Sheriff from all costs or damages for injury to persons or property, or death, caused by the negligent acts of the Fire District, its employees, servants or agents.

6. PERSONNEL.

- (a) Employee Status: For purposes of this Agreement only, all persons employed by the Sheriff in providing additional police protection services to the Fire District shall be County officers or employees, and they shall not have any benefit, status or right of Fire District employment.
- (b) Payment: The Fire District shall not be liable for the direct payments of salaries, wages or other compensation to County officers or employees providing additional police protection services to the Fire District under this Agreement.
- (c) Indemnity: All Deputy Sheriffs performing services under this Agreement shall be deemed employees of the County for purposes of the Workers' Compensation Law and the Fire District shall not be responsible for the payment of any benefits thereunder.

7. RETENTION OF RECORDS. The Fire District agrees to maintain and have available for audit such records as may be required by the County, New York State or United States governmental agencies. These records shall be available for inspection by properly identified personnel of the above governmental agencies upon reasonable notice, and shall be maintained for a period of six (6) years after termination of this Agreement.

8. NON-ASSIGNMENT. (a) This Agreement may not be assigned by the Fire District nor his right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous written consent of the County.

(b) An assignment of this Agreement shall not relieve the assignor of its obligations hereunder. In the event of assignment, all the provisions hereof shall be binding upon and inure to the benefit of the respective successors and assignees to the same extent as if each such successor or assignee were named as a party to the Agreement.

9. TERMINATION. (a) *Without cause.* The County may terminate this Agreement upon ten (10) days' prior written notice to the Fire District of its intent to terminate without cause.

(b) *With cause.* The County may terminate this Agreement effective immediately, with subsequent written notice to be given to the Fire District of termination with cause.

In the event of termination with or without cause, the Fire District shall deliver to the County any records generated by the County and left in the custody care and control of the Fire District, and any materials and equipment in the custody or control of the Fire District pertaining to the Agreement. Such termination shall not give rise to any cause of action against the County for damages, expenses or other remuneration of any kind.

10. EXECUTORY. The Dutchess County fiscal year begins on January 1st and ends on December 31st of any given year. Notwithstanding anything to the contrary contained herein, it is understood and agreed that this Agreement shall be deemed executory only to the extent of the moneys available to the County for the performance of the terms hereof and that, in the event that the Dutchess County Legislature fails to appropriate the necessary funds to affect payment in any calendar year beyond the initial year herein, this Agreement shall automatically cease and terminate on the last day of the year in which funds have been appropriated for said Agreement and no liability on account thereof shall be incurred by the County beyond the funds available for the performance of this Agreement. It is further understood and agreed that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available moneys for the purpose of this Agreement.

11. EXTENSION. This contract may be extended without further legislation consideration for additional periods of one year each, not to exceed a total of five (5) one year

extensions. Extension(s) shall be in substantially the same form as that contained herein. Operational terms and conditions may be renegotiated for each one year extension.

12. NOTICE. Except as otherwise provided in this Agreement, notice required to be given pursuant to this Agreement shall be made in writing and addressed to the following or such other person as the parties may designate:

DUTCHESS COUNTY SHERIFF
150 North Hamilton Street
Poughkeepsie, NY 12601

FIRE DISTRICT
address
<<City>>, <<State>> <<Zip>>

13. NON-WAIVER. Failure of either party to exercise any rights under this Agreement for a breach thereof shall not be deemed a waiver thereof or a waiver of any subsequent breach.

14. SEVERABILITY. If any provision of this Agreement shall be held unenforceable, the rest of the Agreement shall nevertheless remain in full force and effect.

15. CHOICE OF LAW, VENUE. Any dispute arising directly or indirectly out of this Agreement shall be determined pursuant to the laws of the State of New York. The parties hereby choose the New York State Supreme Court, Dutchess County as the forum for any such dispute.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration but must instead be heard in accordance with the Paragraph above entitled "Choice of Law, Venue".

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the New York State Civil Practice Law & Rules ("CPLR"), Fire District hereby consents to service of process on it by registered or certified mail, return receipt requested or by facsimile (fax) transmission. Service hereunder shall be complete when deposited in the United States mail, duly addressed and with proper postage or when the fax has connected. Fire District must promptly notify the County, in writing, of each and every change of address to which service of process can be made. Service by the County to the last known address shall be sufficient. Fire District will have thirty (30) calendar days after service is complete in which to respond.

18. NOTICE OF INTENT TO SUE. (a) Fire District agrees that at least ninety (90) days prior to commencing suit against the County for any matter arising directly or indirectly out of this Agreement, Fire District shall provide to the County a sworn document listing the time, place, and manner of any breach of this agreement, together with an itemized list of any

damages to which Fire District believes itself entitled. (b) County shall have the right to conduct a deposition upon oral questions of an officer, employee or agent of the Fire District, of the County's choice, as to any matter arising under this agreement within the 90 day period described above. (c) Strict compliance with this paragraph shall be a condition precedent to maintenance or institution of any action or proceeding, whether legal or administrative. This paragraph shall not be construed to toll any applicable statute of limitation. (d) Any action against the County must be commenced within one year of the event which gives rise to liability.

19. CAPTIONS. The captions are inserted only as a matter of convenience and reference, and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms hereof.

20. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original and shall constitute the same Agreement.

21. GENDER. Words of the masculine or feminine gender in this Agreement, unless the meaning of the sentence indicates otherwise, shall be deemed to refer to either male or female persons.

22. BINDING. This Agreement shall be valid and binding once it has been approved by the Dutchess County Attorney's Office, executed by the County Executive and delivered to the Fire District at the address indicated in the introductory paragraph of this Agreement.

23. ENFORCEMENT EXPENSES. Fire District shall pay all costs and expenses, including reasonable attorney's fees (in-house or retained counsel), that the County incurs in enforcing any of the terms of this Agreement.

24. RULES OF CONSTRUCTION. This contract shall be deemed to have been mutually prepared by the parties hereto and shall not be construed against any of them solely by reason of authorship.

25. CONFIDENTIALITY. The Fire District shall comply with applicable federal and state requirements for confidentiality of records and information, and agrees not to allow examination of records nor disclosures of information, except as required by the County under the terms of this Agreement.

26. ENTIRE AGREEMENT. The terms of this Agreement, including its attachments and exhibits, represent the final intent of the parties. Any modification, rescission or waiver of the terms of this Agreement must be in writing and executed and acknowledged by the parties with the same formalities accorded this basic Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

APPROVED AS TO FORM:

ACCEPTED: COUNTY OF DUTCHESS

County Attorney's Office

BY: _____
Marcus J. Molinaro
County Executive

APPROVED AS TO CONTENT:

FIRE DISTRICT

Dutchess County Sheriff

BY: _____
Print Name _____
Title _____

DUTCHESS COUNTY SHERIFF'S OFFICE
150 North Hamilton Street
Poughkeepsie, New York



2015 Administrative Fee Schedule

Hourly Rate Schedule 2015			
	Annual		
	Salary	Hr Rate	Hr OT Rate
Deputy Sheriff PT		21.97	
Deputy Sheriff			
Entry Level	55946		40.191
Sr Member	99448		71.44
Administrative Fees	4.21	per hour billed	
Mileage	0.75	per mile if car is required	
Fringe Benefits Charged in addition to Hourly Rates			
Retirement	20.7%		
FICA	7.65%		

This fee schedule is an estimate. Range is from Part time member hourly rate \$21.97 to Senior member overtime rate.

Municipality will pay actual cost of member assigned plus fringe.

The foregoing limitations on expenditures shall not be applicable to the use of premiums from the sale of fire district obligations, the unexpended portion of the proceeds of fire district obligations, the income and capital gains realized on the temporary investment of the proceeds, inclusive of premiums, of fire district obligations, as provided in section 165.00 of the local finance law.

The foregoing limitations on expenditures shall not be applicable to the use of the proceeds of a gift or gifts given to a fire district, and such proceeds may be expended for purposes authorized by or pursuant to law.

The provisions of this subdivision shall not be deemed to prevent the issuance of bonds, bond anticipation notes, capital notes or budget notes to finance any object or purpose for which the fire district may expend money.

The foregoing limitation on expenditures shall not be applicable to the use of insurance proceeds received for the loss, theft, damage or destruction of real or personal property when proposed to be used or applied to repair or replace such property. Such proceeds may be appropriated by resolution of the board of fire commissioners at any time for such objects and purposes.

The foregoing limitation on expenditures shall not be applicable to contributions to the state's unemployment insurance fund on account of salaries paid to fire district officers and employees, including the paid officers, firemen and other personnel of the fire department.

18-a. May employ such persons as may be necessary to effectuate the objects and purposes of the district. Persons may be employed as paid firemen, however, only after a public hearing in relation to such employment. Any such hearing shall be held by the board of fire commissioners and the notice of the hearing shall state the time when and place in the district where the hearing will be held, the number of paid firemen to be employed and the total annual amount to be spent for the salaries or other compensation of such firemen. The notice shall be published in the official newspaper of the district at least once not more than twenty nor less than ten days before the hearing.

19. Shall have the exclusive management and control of the property of the fire district and may insure the same against loss or damage from any risk whatsoever and may contract at the expense of the district for insurance indemnifying the district, its officers, agents, employees and the members of all fire companies against any loss arising from injuries to persons or property through the operation and maintenance of such fire district and the performance of the duties thereof and insure the members of the fire department of the district against injury or death in the performance of their duties, or both.

20. May grant or withhold its consent to the formation of a fire corporation which intends to operate within the territory of such fire district, pursuant to subdivision (f) of section four hundred four of the not-for-profit corporation law.

✓ 21. Shall have and exercise all the powers conferred upon the fire district and such additional powers as shall be necessarily implied therefrom.

22. May contract for the furnishing of fire protection within the fire district with any city, village, fire district, or incorporated fire company having its headquarters outside such fire district and maintaining adequate and suitable apparatus and appliances for the furnishing of fire protection in such district; provided there is no fire company maintaining its headquarters in said district or provided the fire department of said district is, in the judgment of such fire commissioners, unable to render adequate and prompt fire protection to such district or any area thereof. The contract also may provide for the furnishing of (1) emergency service in case of accidents, calamities or other emergencies in connection with which the services of firemen would be required and (2) general ambulance service subject, however, to the provisions of section two hundred nine-b of the general municipal