



**Date:** April 16, 2014

**To:** Thomas J. Bonfield, City Manager

**Through:** W. Bowman Ferguson, Deputy City Manager

**From:** Daniel M. Curia, Fire Chief

**Subject:** Partial Payment to Parkwood Volunteer Fire Department for Fire Protection in Southern Durham

### **Executive Summary**

The Durham Fire Department (DFD) has traditionally provided fire protection in the southern areas of the City through the use of mutual aid contracts to augment the DFD's response. Initially, these contracts were required by General Statute but have been renewed beyond statutory requirements to supplement operations in the southernmost portions of the City. Recent developments concerning service delivery by the Parkwood Volunteer Fire Department (PVFD) have caused the DFD to duplicate fire response from PVFD into Durham County, and raised questions about the value of continuing contract service with PVFD. While the last contract for service expired on June 30, 2013, both departments continued to operate as though the contract would be extended. Therefore staff recommends the City offer a partial payment to PVFD for a portion of the current fiscal year where service was provided by the volunteer department. In exchange for this payment, Parkwood would agree to release the City from any perceived obligations for future funding under the expired contracts.

### **Recommendation**

To authorize the City Manager to enter into a settlement agreement with Parkwood Volunteer Fire Department in the amount of \$64,310.47 for fire protection services from July 1, 2013 to December 11, 2013.

### **Background**

Contracting for fire protection between the City of Durham and the Parkwood Volunteer Fire Department began when the City first annexed portions of southern Durham County that were served by PVFD. Additional annexations added to the area covered by these contracts for supplemental service.

North Carolina General Statute 160A-58.57 provides the framework under which the City of Durham was obligated to enter into service contract with PVFD. This statute stipulates that any time a municipality annexes an area covered by a County tax district, the municipality must make a good faith effort to negotiate a five year contract with the affected rural fire department to continue to provide service into the area.

Due to the better-positioning of DFD resources in south Durham in recent years, personnel within the DFD began an examination of all contracts with volunteer fire departments to determine how to best approach renewals. An analysis and recommendation for future renewals was forwarded to the City Manager's Office on May 21, 2013. At that point, it was decided that the DFD would renew all contracts for FY14 and would consider adjustments and/or reductions to these contracts in FY15 and beyond. Contracts with PVFD which were slated for renewal in FY14 totaled \$143,130.04.

Over the summer, the DFD and PVFD started negotiating a new contract for service as the previous contract expired on June 30, 2013. A proposed final version of the new contract was received on November 26, 2013. While the contract was being developed, DFD developed significant concerns resulting from the performance of PVFD at a structure fire on Crystal Oaks Court in September 2013. Although the fire was located in the County, the DFD concern was that poor performance by PVFD in their primary response area would naturally raise concerns regarding PVFD performance in the areas where there is a contract with the City of Durham. A September 6 letter to PVFD Chief Colley from DFD Chief Curia outlined these concerns.

One outcome of this letter was that the Durham County Fire Marshal's Office initiated a formal investigation into the PVFD's operations at the Crystal Oaks fire, which grew into a larger investigation of their general operating practices. In mid-October 2013, personnel from the Durham County Fire Marshal's Office requested that the DFD respond into portions of RTP that are the primary response area of PVFD; DFD agreed to the request. On December 11, 2013, that request was expanded to include a full DFD structure fire response and an enhanced automatic fire alarm response into any portion of the PVFD district, whether contracted by the City or not, to ensure adequate fire coverage into those portions of Durham County. Again, DFD agreed with stipulations from DCM Ferguson that this be viewed as a temporary solution to the PVFD service delivery issues coming to light. This arrangement was in effect from December 11, 2013 through February 14, 2014, at which time personnel from the Durham County Fire Marshal's Office requested that the DFD scale back its response into the Durham County portions of southern Durham.

During the time period in which these discussions were occurring, the FY14 PVFD contract was submitted into the City's contract renewal process. As the magnitude of the response issues were being uncovered, DFD personnel removed the contract from the renewal process until such time that a discussion between DFD personnel, City Attorney's Office personnel, and DCM Ferguson could take place to determine a prudent course of action related to the pending contract renewal.

### **Issues/Analysis**

Based on the Fire Marshal's request that DFD assume parallel response to PVFD, it became clear that the City was no longer receiving any tangible value for the contracted service with PVFD. Staff began to explore terminating the contract renewal process. Consultation with the City Attorney's Office verified the City had no legal obligation to execute the contract it had negotiated with PVFD.

Given the service deficiencies within the PVFD and considering the extended period during which the DFD responded to all areas of the PVFD service area, the DFD does not believe it is prudent for the City of Durham to pursue the FY14 contract renewal. The recommendation from DFD to City Council is to allow the City Manager to pro-rate the \$143,130.04 annual payment to include 164 days of service from July 1, 2013 through December 11, 2013; this pro-rated amount is \$64,310.47. The City believes it is appropriate to offer this payment in recognition of the fact that PVFD and DFD were continuing to honor the terms of prior contracts while a new contract was being negotiated.

In a letter dated February 3, 2014, the PVFD Board of Directors and PVFD Fire Chief received notification that the City of Durham will not renew contracts for FY14 or FY15. We will convert all response plans to be in compliance with the County-wide Automatic Aid agreement (in effect since December 2004) and agreed to by all local fire chiefs and their respective Boards of Directors, the County Fire Marshal, City Manager, and the County Manager. The February 3 letter further indicated that the DFD would recommend to City Council to authorize the City Manager to provide a settlement payment in the amount of \$64,310.47. In an email received February 19, 2014 from PVFD Fire Chief Colley to DFD Fire Chief Curia, Chief Colley indicated that the PVFD Board of Directors accepted the proposal.

### **Alternatives**

One alternative to this proposal is to renew the Fiscal Year 2014 mutual aid contract with PVFD, totaling \$143,130.04 and to revert to the long-standing practice of annual renewal of mutual aid contracts. The DFD feels this is not necessary based on the County-wide Automatic Aid Agreement, which was effective December 10, 2004. In that agreement, all City and County Fire Departments, including PVFD, agreed to respond to all areas of the City of Durham in which they are requested and/or geographically closer and to absorb the cost associated with their response. Additionally, the DFD reciprocates by responding into Durham County utilizing the same criteria.

Another alternative is to determine that no payment to PVFD is appropriate, and to decline to give the City Manager the authority to process the payment and execute a settlement agreement. While this is a legal course of action, staff feels it fails to acknowledge that DFD and PVFD did work in good faith for a portion of this fiscal year with the initial intent of extending the agreement. PVFD made operational and financial decisions on the presumption that a full payment would be received in conjunction with the execution of a FY14 contract. Given that DFD did not indicate its intention not to renew until recently, we believe it is appropriate to offer PVFD a partial payment.

### **Financial Impact**

The financial impact of the proposal is \$64,310.47 to pay PVFD for responses in the period of July 1, 2013 through December 11, 2013. The DFD already has funds appropriated for this purpose. The City's approved FY14 budget included \$143,130.04 for payment of this contract, and those funds are available to issue the \$64,310.47 payment. This decision will result in a net savings of \$78,819.57 over initial budget projections for contract payments.