

RESOLUTION NO. R-46-16

A RESOLUTION AUTHORIZING EXECUTION OF A CONTRACT WITH ZERO MOUNTAIN INC. FOR FIREFIGHTING ASSISTANCE ON AN ANNUAL BASIS

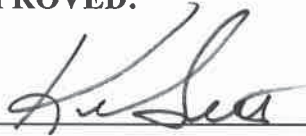
BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

Section 1. The Contract for Firefighting Assistance on an Annual Basis between the City of Fort Smith and Zero Mountain Inc., substantially in the form attached hereto, providing for the terms and conditions of firefighting assistance, is hereby approved.

Section 2. The Mayor, his signature being attested by the City Clerk, is hereby authorized to execute the Contract for Firefighting Assistance on an Annual Basis approved by Section 1.

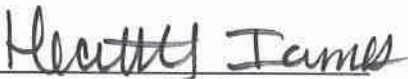
THIS RESOLUTION ADOPTED this 5th day of April 2016.

APPROVED:



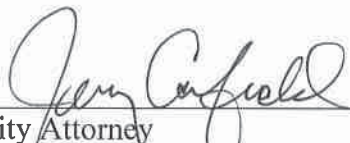
VICE Mayor

ATTEST:



acting, City Clerk

Approved as to form:



City Attorney
No Publication Required

**CONTRACT FOR FIREFIGHTING ASSISTANCE
ON AN ANNUAL BASIS**

WITNESS this Agreement executed this ~~18th~~^{5th} day of ~~February~~^{April}, 2016, by and between Zero Mountain, Inc., a Corporation, with reference to the following described property located outside of the corporate limits of the City of Fort Smith, Arkansas, to wit:

Street No.	Street or Avenue	Legal Description
8425	Hwy 45	
	Fort Smith, AR 72916	

and the City of Fort Smith, Arkansas, acting by and through its Mayor, after resolution duly passed by the Board of Directors of the City:

1. In consideration of the payment of the sums set forth herein, the City of Fort Smith agrees to provide firefighting machinery and equipment, with the necessary firefighters to operate it, to combat fires at the above-described location; provided, however, that this contract shall be subject to the City's recognized superior and paramount right of refusal to respond or to limit its response to any call or fire alarm at such location if responding would endanger the lives or property of citizens of the City, in the sole judgment of the Chief of the Fort Smith Fire Department or his/her designee or in the sole judgment of the City Administrator of the City of Fort Smith. In exchange for such service, Zero Mountain, Inc. agrees to pay to the City an annual sum equal to the proportional cost of real and personal property tax that any business (or any other property classification) within the City would pay for the same services. (This "proportional cost" is derived from the percentage of the general fund revenue appropriated to the Fort Smith Fire Department in that given year.) For example, the annual fee

for such firefighting services shall be a sum based on the millage assessed on the business' real estate and personal property values (established by the Sebastian County Tax Assessor) times the proportional cost for firefighting services available to businesses within the City, which proportional cost figure is currently twenty-eight percent (28%) (e.g., twenty-eight percent of five mills (.005 x 28%)). The annual fee will be recalculated each year, beginning August 15, 2016, and thereafter on or before the 15th day of each August for the duration of this Agreement; the effective date of any changes in the annual fee shall be the first of January of the following year. In addition to the aforementioned annual sum, an amount equal to the City's one mill tax assessment for fire pensions shall be added to the annual firefighting fee – this sum shall be dedicated and paid into the Arkansas Local Police and Fire Retirement System (LOPFI) Contribution Fund. Using the aforementioned formula for determining the annual fee, the parties recognize the possibility of an increase or a decrease of that annual payment during the years 2016 and 2017 (either based on changes in appraised real estate or personal property values or based on changes in the percentage of proportional cost of providing firefighting services within the City) – in such event, the increase or the decrease for those years shall only be one-third of that increase or decrease for the respective year, with full implementation of the formula as it relates to any increase to be in effect for the contract year beginning January 1, 2018; however, for the purposes of determining if a decrease of the annual payment is appropriate, the formula shall become effective upon completion of the initial term of the contract.

Zero Mountain, Inc. agrees to pay to the City the annual contract sum, payable in advance, in equal monthly installments. The payments are to be made through the City's Finance Department.

2. Zero Mountain, Inc. agrees that the Fort

Smith City Fire Marshal, Fire Chief and other public safety officials may, at reasonable times, enter upon and inspect all portions of the above described premises and make recommendations for the elimination of fire hazards, the compliance with all such recommendations to be a condition of the future furnishing of firefighting equipment and personnel by the City; furthermore, Zero Mountain, Inc agrees to provide full information to the City Administrator and to the City Fire Chief regarding the location of all water hydrants and connections for its sprinkling systems, if any, or other firefighting apparatus which may, from time to time, be available to the property.

3. Either party may terminate this Agreement on thirty (30) days' written notice to the other. In the event that the City exercises its right to terminate this Agreement, the City shall repay a pro rata portion of the annual fee agreement paid in advance by Zero Mountain, Inc. In the event that Zero Mountain, Inc. terminates this Agreement, there shall be no refund of the fees already paid. Any notices required under this Agreement shall be sent to the following:

To the Corporation:

Zero Mountain, Inc.
8425 Hwy 45
Fort Smith AR 72916

To the City:

City of Fort Smith, Arkansas
City Administrator
P.O. Box 1908
Fort Smith, AR 72902

4. Zero Mountain, Inc. may assign this Agreement to another party that becomes the tenant or owner of the above described real property after providing at least fourteen (14) days' prior written notice to the City Administrator. However, the City Administrator shall have the absolute right to disapprove the assignment and/or to cancel this Agreement.

5. Zero Mountain, Inc. recognizes and acknowledges that

the City of Fort Smith and its employees are, pursuant to A.C.A. § 21-9-301, immune from liability and from suit for damages, except to the extent that they may be covered by liability insurance. Furthermore, the parties intend this Agreement to be for their sole benefit and do not confer any benefit, right, or remedy upon any person or entity other than the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date first set forth above.

City of Fort Smith, Arkansas

By: [Signature]
VICE-Mayor

Attest:

[Signature]
acting City Clerk



Zero Mountain, Inc Corporation

By: [Signature]
[Name] MARK B. Rumsey
[Title] Chairman of the Board