

Resolution No.: 17-122
Introduced: May 3, 2011
Adopted: May 9, 2011

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Public Safety Committee

SUBJECT: Memorandum of Agreement with Volunteer Fire and Rescue Association (MCVFRA)

Background

1. County Code Section 21-6 establishes a process for Local Fire and Rescue Departments (LFRD's) to select an authorized representative to represent their interests, and requires the Fire Chief to negotiate in good faith with the authorized representative on certain issues affecting LFRD's and their volunteers.
2. The LFRD's selected the Montgomery County Volunteer Fire and Rescue Association (MCVFRA) to be their authorized representative.
3. On April 1, 2011, the Council received from the County Executive the attached Memorandum of Agreement between Montgomery County Government and Montgomery County Volunteer Fire and Rescue Association for the period from July 1, 2011, until June 30, 2014.
4. Code Section 21-6(p) requires the Executive to submit to the Council any element of an agreement that requires an appropriation of funds, may have a future fiscal impact, is inconsistent with any County law or regulation, or requires the enactment or adoption of any County law or regulation. Section 21-6(q) directs the Council to notify the parties within 60 days if it disapproves an agreement in whole or in part. The Council may by resolution extend the time for action.
5. The Public Safety Committee reviewed the portions of the Memorandum of Agreement requiring an appropriation of funds for FY12 on April 28, and made recommendations on each of the provisions subject to review.

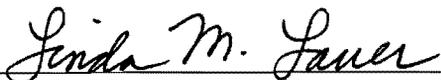
Action

The County Council for Montgomery County, Maryland approves the following resolution:

The County Council disapproves the following provisions of the Agreement:

1. Article 11 – Uniforms and Equipment (turnout boots and gear bags) for active volunteers.
2. Article 12 – Option 1 nominal fee of \$200 and an Option 2 nominal fee of \$400 for active volunteers.
3. Article 22 – Orientation Course.
4. Side letter/MOU - \$223,250 each year for MCVFRA operating expenses.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

**MEMORANDUM OF AGREEMENT
BETWEEN
THE MONTGOMERY COUNTY GOVERNMENT AND THE MONTGOMERY
COUNTY VOLUNTEER FIRE RESCUE ASSOCIATION**

The Montgomery County Government (County) and the Montgomery County Volunteer Fire Rescue Association (MCVFRA) agree that their existing directly negotiated agreement will be amended effective July 1, 2011, through June 30, 2014 with the following agreed upon items.

Please use the key below when reading this document:

<u>Underlining</u>	<i>Added to existing agreement</i>
[Single boldface brackets]	<i>Deleted from existing agreement</i>
* * *	<i>Existing language unchanged by parties</i>

* * *

Article 5 – Organization Security

Section One. The County agrees to provide [1000] 50 copies of the contract in booklet form to be provided to the Association within ninety days of the effective date of this Agreement for each LFRD and the MCVFRA office. An electronic copy shall also be maintained on the MCFRS and OHR websites. The cover page of the Agreement shall be designed by mutual agreement between the parties.

[Section Two. By July 1, 2009 the County will provide the Association with a “FIREHOUSE” data terminal with the necessary software, communications line, monitor and printer to be located at the MCVFRA office. Security access will be limited to the battalion chief level.]

[Section Three. The County will provide \$5000 in each year of the contract for an annual awards ceremony for the volunteers each April of the contract. The Association and fire chief will agree on a venue, forum and list of recognitions.]

Section [Four]Two. The County and the MCVFRA will determine the size and location of an “orange style” MCVFRA decal which will be displayed on each side of County owned apparatus used in providing fire, rescue and emergency medical services that are staffed by bargaining unit members. The decals will be provided by the Association.

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Article 7 – Disciplinary Action Procedures for LFRD Volunteers

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Section Four. Fire Chief's Discipline.

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- d. Once the Fire Chief has determined there is cause to discipline a volunteer, the Fire Chief agrees to give due consideration to the relevance of any mitigating and/or aggravating factors, in deciding the nature and level of disciplinary action appropriate, including, but not limited to:
1. the nature and seriousness of the offense, and its relation to the volunteer's duties, position, and responsibilities, including whether the offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated;
 2. the volunteer's job level and type of employment, including his or her supervisory or fiduciary role, the frequency and level of his or her contact with the public, and the prominence of his or her position;
 3. the volunteer's past MCFRS disciplinary record;
 4. the volunteer's past work record, including his or her length of service to the Department and LFRDs, his or her performance, his or her demonstrated ability to get along with fellow MCFRS members, and his or her dependability;
 5. the effect of the offense upon the volunteer's ability to perform at a satisfactory level;
 6. the consistency of the penalty with those imposed upon other MCFRS members with similar personnel history for the same or similar offense(s);
 7. the notoriety of the offense or its impact upon the reputation of MCFRS;
 8. the clarity with which the volunteer was actually on notice of any rules, regulations, directives, policies, orders, instructions or the like that were violated in committing the offense, or had been warned about the conduct in question;
 9. the potential for rehabilitation;
 10. mitigating circumstances surrounding the offense, such as unusual job tensions, personality conflicts, mental impairment, harassment,

bad faith, or malice or provocation on the part of others involved in the matter; and,

11. the potential adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the volunteer or others.

Section Five. Disciplinary Process.

- a. Statement of Charges.

* * *

2. The Fire Chief must allow the individual at least 15 County business days after receiving the Statement of Charges to respond. The volunteer has the right to request an extension of time on behalf of the volunteer to respond to the Statement of Charges. Such requests shall not be unreasonably denied.

* * *

- b. Notice of Disciplinary Action. If the Fire Chief determines to proceed with discipline, and after following section 5 (a) (1) – (4), the Chief must issue a Notice of Disciplinary Action. A Notice of Disciplinary Action must include:

* * *

5. notice of the right to appeal the disciplinary action to the [Fire and Rescue Commission (FRC)] Merit System Protection Board (MSPB); and
6. the deadline for filing [a FRC] an MSPB appeal.

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Section Eight. Appeals of certain disciplinary actions. Per Chapter 21-7 of the Montgomery County Code, a volunteer firefighter or rescuer aggrieved by an adverse final action of the Fire Chief involving the removal, demotion, or suspension of, or other disciplinary action applied specifically to, that individual may appeal the action within 30 days after the action unless another law or regulation requires that an appeal be filed sooner, to the [Fire and Rescue Commission] Merit System Protection Board. An appeal must not stay the disputed action. [A volunteer at a local fire and rescue department may appeal a decision of the Fire and Rescue Commission concerning a specific personnel action, or the failure to take any such action, to the Merit System Protection Board as if the appellant were a County merit system employee.] Any aggrieved party may appeal the decision of the Board to any court with jurisdiction under the rules governing appeals

from administrative agencies, and may appeal any adverse decision of that court to the Court of Special Appeals. Further, all provisions of Chapter 21-7 are hereby retained in full force and effect.

Section Nine. Disciplinary Examinations

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C. Prior to an examination, the County agrees to inform the volunteer's representative of the subject of the examination. The representative must also be allowed to speak privately with the volunteer before the examination. The volunteer's representative must be allowed to speak during the interview. However, the volunteer's representative does not have the right to bargain over the purpose of the interview. The volunteer's representative can, however, request that the County representative clarify a question so that the volunteer can understand what is being asked. When the questioning ends, the volunteer's representative can provide additional information to the County representative. Before providing such information, the volunteer's representative and the volunteer may briefly meet privately for purposes of discussion.

[C] D. The County is free to terminate any examination of a member in connection with an investigation at any time for any reason.

[D] E. The Association shall have no right to represent a member who is examined as a witness or third party in any investigation. However, if the member learns during the course of the witness/third-party investigation that he or she may be subject to discipline, he or she may request Association representation pursuant to Section 9.A. above.

Section Ten. Time, Place and Manner of Interviews/Examinations Conducted by the Internal Affairs Section of a Member. Any interview or examination conducted by the Internal Affairs Section pursuant to Section 9 of this Article may take place at the Internal Affairs Section office, the MCVFRA Office, or at any other place to which the parties mutually agree. The investigator must not go to any fire station or volunteer worksite in an attempt to locate the volunteer to interview without prior agreement by the volunteer.

Section Eleven. MCFRS/ Internal Affairs Division Investigations

A. The LFRD may request the assistance of IAD through the Fire Chief in conducting an investigation. The IAD shall work with the LFRDs as requested.

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Article 9 – Volunteer Records

Section Seven. Internal Affairs Files.

1. If an LFRD-only Internal Affairs investigation is conducted, all records generated from that investigation shall be kept, handled, and maintained according to that LFRD's policies and procedures. If a joint IAD/LFRD investigation is conducted, all records generated from that investigation shall be kept by each entity according to their policies and procedures.

2. Access to the IAD files shall be limited to:
 - a) The volunteer, but only to the extent allowed by item 3 below

 - b) Fire Chief, LFRD Department head or designees

 - c) County Attorney or designee (need to know basis; i.e., when the volunteer is involved in litigation)

3. The Department will provide the volunteer and their representative any written statements (e.g., citizen complaints, department observations, etc.) in the possession of the MCFRS and used in connection with an adverse action taken against a bargaining unit member. These statements will be sanitized (i.e., address, phone number deleted) to protect privacy rights in accordance with the law.

4. In cases involving complaints where the charges were deemed unsustained or unfounded by IAD, the files shall be expunged at the latter of three (3) years after the date the findings were made or any applicable statute of limitations or at the conclusion of any pending litigation.
 - a. Files involving complaints where a charge was sustained shall be eligible for expungement at the latter of five (5) years or any applicable statute of limitations or at the conclusion of any pending litigation. When documents are expunged from a volunteer's file, in accordance with the criteria above, a notice shall be sent to the volunteer's last known address.

 - b. The expungement method shall be the shredding of the physical file. In cases where more than one bargaining unit

member is involved and one or more bargaining unit members is not entitled to expungement, the name of the bargaining unit member who is eligible for expungement will be redacted from those documents that refer to multiple bargaining unit members. Those documents that refer only to the bargaining unit member who is eligible for expungement shall be destroyed.

- c. The expungement of information from the electronic database shall consist of the electronic obliteration of the bargaining unit member's name, identification number and LFRD affiliation.

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Article 11 – Uniforms and Equipment

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Section Two. Effective July 1, [2010] 2012, the County shall purchase [874] 220 pairs of leather turnout boots. Effective July 1, 2013, the County shall purchase 220 pairs of leather turnout boots. The Association shall distribute the boots to active volunteers as defined in Montgomery County Code Section 21-21(a) on the IECS who belong to an LFRD with an approved Stand-by program;

[Section Three. Effective July 1, 2010, the County will supply 874 gear bags for turn out equipment to the MCVFRA. The Association shall distribute the gear bags to active volunteers as defined in Montgomery County Code Section 21-21(a) on the IECS who belong to an LFRD with an approved Stand-by program;]

Article 12 – Nominal Fee

An active volunteer as defined in Section 21-21 (a) of the Montgomery County Code shall receive either:

- (1) a nominal fee of: [three hundred (\$300.00) dollars July 1, 2009; four hundred (\$400.00) dollars July 1, 2010] two hundred forty (\$240) dollars July 1 each year of this agreement;

OR

- (2) a nominal fee of: [five hundred (\$500.00) dollars July 1, 2009; six hundred (\$600.00) dollars July 1, 2010] four hundred (\$400) dollars July 1 each year of this agreement; if the active volunteer:

* * *

Article 14 – Duration of Agreement

The term of the agreement will be three (3) years from July 1, [2008] 2011 through June 30, [2011] 2014.

Article 15 – Drug and Alcohol Testing

Section One. [The County and MCVFRA shall work collaboratively to develop a drug and alcohol testing policy for all volunteers. Such policy must include: post-collision, for cause, and random drug and alcohol testing. The Drug and Alcohol testing policy must be completed by the parties no later than May 1, 2008. The parties agree that mediator/arbitrator Jerome Ross retains jurisdiction to issue a final decision in accordance with the impasse procedures as stated in Montgomery County Code Section 21-6. Should the parties not reach agreement on a drug and alcohol testing policy including the above listed criteria before May 1, 2008, the parties shall submit last best offers to mediator/arbitrator Jerome Ross no later than 5:00 pm on May 7, 2008. Arbitrator Ross will render a decision no later than 5:00 pm on May 30, 2008. Such policy will be effective July 1, 2008. [See Appendix I]]

The Association and County recognize the importance of insuring the public's safety and maintaining a fire and rescue service free from alcohol abuse and drug abuse by its dedicated public servants. The Association members will continue to follow the Drug Testing Policy and Procedures agreed upon in the collectively bargained agreement effective for the years July 1, 2008 through June 30, 2011 with the following amendments:

Amendment One: The random drug testing portion of the program will not commence for the volunteer personnel the policy until June 30, 2012.

Amendment Two: Under Background, the percentage of IECS certified LFRD personnel to be tested in a year will be changed from 25% to 20% per year.

Article 16 - Training

Section One. The PSTA shall [consider] grant equivalencies for all National Professional Qualification Board (Pro-Board), International Fire Service Accreditation Congress, and Maryland Fire Rescue Institute (MFRI) training certifications. The PSTA [shall make every effort to] issue a course recognition and equivalency within 14 days of a volunteer request.

* * *

[Section Four. The PSTA shall develop an on-line registration system for all PSTA courses by December 1, 2008. Where possible, all registration will be done electronically

after that date. The MCVFRA shall be consulted with regard to the program's design and implementation.]

Section [Five] Four. Where feasible, the PSTA shall develop on-line courses for PSTA courses that can be taught through distance learning by December 1, 2009. The MCVFRA shall be consulted with regard to the courses' design and implementation.

Section Five. Volunteers will only be removed from the IECS in a manner consistent with Chapter 21-8 of the Montgomery County Code.

Section Six. If an LFRD volunteer transfers from one LFRD to another LFRD the County shall maintain that volunteer on the IECS continuously and use all certifications that were previously submitted as the required documentation. The LFRD or volunteer shall not be required to resubmit paperwork and/or certifications for simply transferring to another LFRD.

Section Seven. The County will issue a County ID card and PASS tag when a new volunteer joins an LFRD upon completion of their background check and acceptance into an LFRD in a timely manner.

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Article 21 – Communications

Electronic Correspondence: The County agrees to create a #FRS.Volunteer Bargaining Unit email group for official MCVFRA correspondence sent to bargaining unit members. The County agrees to provide the MCVFRA President, or designee, access to the distribution group. Access to send correspondence to this group will be limited to authorized officers of the MCVFRA as defined by the MCVFRA.

Article 22 – Volunteer Basic Orientation Course

Section One. The County agrees to fund the Volunteer Basic Orientation Course each year of the agreement not to exceed \$5,000 per year. The funding requests will be submitted to the fire chief for reimbursement each quarter.