

**PENN TOWNSHIP AND TOWN OF OSCEOLA FIRE PROTECTION TERRITORY
AGREEMENT**

This Agreement is entered into as of this 20th day of MARCH, 2018, by and between Penn Township, St. Joseph County, Indiana (“Penn Township”), by its Trustee and its Township Board and the Town of Osceola, St. Joseph County, Indiana (“Osceola”) by its Town Council.

WHEREAS, IC 36-8-19 permits two (2) or more participating units of local government to establish a fire protection territory to provide fire protection services to those participating units; and

WHEREAS, Penn Township currently owns certain fire equipment and apparatus; housing for that equipment and apparatus; employs certain fire personnel and contracts with Osceola Town Council to provide fire protection and emergency medical services within Penn Township within the Town of Osceola; and

WHEREAS, Osceola currently does not have any fire department and does not have the means or tax base necessary to establish and pay for an independent fire department; and

WHEREAS, Osceola is contiguous to Penn Township; and

WHEREAS, Penn Township currently provides fire protection and emergency medical services to Osceola pursuant to contracts between the government entities; and

WHEREAS, the Trustee and Township Board of Penn Township and the Town Council of Osceola have determined that it will be in the best interests of the citizens of those units of government to enter into an agreement to form a fire protection territory;

NOW THEREFORE, the parties agree as follows:

1. Establishment of Fire Protection Territory. The Trustee and Township Board of Penn Township hereby joins together with the Town Council of Osceola under the provisions of IC 36-8-19 to establish a fire protection territory (the “Territory”).

2. Boundaries. The area constituting the fire protection territory shall include the entire areas of Penn Township, St. Joseph County, and the area that is within the corporate boundaries of the Town of Osceola. A map of the area included in the Territory is attached hereto as Exhibit “A”.

3. Provider Unit. The Provider Unit, as described in IC 36-8-19-3, shall be Penn Township.

4. Participating Units. The Participating Units, as defined in IC 36-8-19-4, shall be Penn Township and Osceola.

5. Purposes. The Territory shall provide to the Participating Units the following services:

- a. Fire protection, including the capability for extinguishing fires that might be reasonably expected because of the types of improvements, personal property, and real property within the boundaries of the Territory;
- b. Emergency medical services as currently provided;
- c. Such other functions and services, related to emergency medical services, fire protection, fire prevention and hazardous materials mitigation as the parties may agree.

6. Term of Agreement. The term of this Agreement shall be from July 1, 2018 through June 30, 2019, and shall automatically renew for successive one (1) year periods, until either party passes a resolution after January 1 and before April 1 of any calendar year, terminating the Agreement, effective June 30 of that calendar year.

7. Fire Protection Executive Committee.

a. Membership will consist of three (3) voting members and two (2) non-voting members:

- i. The Township Trustee of Penn Township shall be a voting member.
- ii. The President and Secretary of the Penn Township Advisory Board shall each be voting members. The third member of the Penn Township Advisory Board shall be a non-voting member and will act in an advisory capacity.
- iii. The Town of Osceola Town Council President shall be a non-voting representative of the Town's Citizens and will act in an advisory capacity.
- iv. A quorum consists of a majority of the voting members of the Committee. All decisions of the Committee require the affirmative vote of two (2) of the voting members.

b. Terms of service and Election of Officers

- i. The terms of service for the Penn Township Advisory Board Members, the Township Trustee, and the Osceola Town Council President shall be for their respective terms of office.
- ii. The Chair of the Executive Committee will be the Penn Township Trustee.
- iii. The Executive Committee will appoint, from its membership, a Vice Chair and Secretary and such other officers as it deems appropriate. The Vice Chair will act in the Chair's place in case of the Chair's absence. The Vice Chair will act for the Secretary in the Secretary's absence.

- c. Role of the Executive Committee will be fiscal as follows:
 - i. Recommend annual budget;
 - ii. Recommend major purchases in excess of \$50,000; purchases for less than \$50,000.00 are within the purview of the Fire Chief;
 - iii. Contribute to the planning and development of possible future capital projects;
 - iv. Receive and review annual reports from the Provider Unit and Fire Chief;
 - v. Recommend staffing and equipment allocations;
- d. Compensation. No member of the Executive Committee will receive compensation for his/her service from the Territory.

8. Township Trustee of Penn Township

- a. Trustee retains appointing authority consistent with Indiana Code.
- b. Trustee is considered the Safety Board, consistent with I.C. 36-8-3-4.1.

9. Fire Protection Territory Fund.

a. Penn Township, as the Provider Unit, shall establish a Fire Protection Territory Fund ("Fund"). All expenses of operating and maintaining the fire protection services within the Territory, including repairs, fees, salaries, depreciation on all depreciable assets, rents, supplies, contingencies, and other expenses lawfully incurred within the Territory shall be paid from the Fund. Except as provided Section 9(c) and Section 10(f) of this Agreement, the Fund may not be used for any other expenses.

b. The following monies shall be deposited into the Fund, as received by the Participating Units:

- i. All receipts from taxes imposed by the Participating Units to fund the expenses described in this Section.
- ii. Any money transferred to the Fund by the Provider Unit under Section 9(c).
- iii. Any receipts from false alarm fees or other fees imposed under IC 36-8-13-4.

iv. Any other fees or charges, not otherwise designated for specific purpose by statute, collected by reason of the providing of firefighting, emergency medical or ambulance services by the Territory.

c. If the amount levied in a particular year is not sufficient to cover the costs incurred in providing fire protection and emergency medical services within the Territory, Penn Township may transfer, from available sources, to the Fund the money needed to cover those costs. The parties agree to levy such additional taxes for deposit into the Fund, as may be necessary to repay any advances made by Penn Township hereunder.

10. Budgeting.

a. The Provider Unit shall annually prepare a budget of the monies necessary to meet the expenses of operation and maintenance of the fire protection and emergency medical services within the Territory, together with a reasonable operating balance, not to exceed one-hundred twenty percent (120%) of the tax levy required to fund the estimated budget.

b. The Provider Unit shall present a copy of the estimated budget to the Executive Committee for its review and approval prior to adoption of the budget by the respective township boards.

c. The Executive Committee will recommend the estimated budget to Osceola for its review prior to the adoption of the budget by Penn Township. After review of the budget by Osceola, the budget shall be submitted to the Penn Township Board for its review and approval.

d. After estimating the expenses and receipts of money, Penn Township shall notify each Participating Unit of the amount of the tax levy that the respective Participating Unit must raise to fund the budget. A pro rata part of the amount budgeted under this subsection shall be considered a part of each Participating Unit's budget.

e. The parties agree that the property tax rates imposed on all taxable property in Osceola to fund the budget and the property tax rate imposed on all taxable property in Penn Township to fund the budget shall be the same.

f. If the amounts levied in a particular year exceed the amount necessary to cover the costs incurred in providing fire protection services within the Territory, the Participating Units may agree to transfer to the Equipment Replacement Fund, an amount not to exceed five percent (5%) of the levy for the Fire Protection fund for that year.

11. Organizational Structure and Operations.

a. Fire and emergency services will be provided to the citizens of the Fire Territory through one organization, administered by the Provider Unit, managed by Penn Township Trustee and a Fire Chief and staffed by fire, emergency, and administrative personnel,

headquarters will be determined by the Executive Committee. The Executive Committee will approve the level of staffing at each fire station.

i. The Provider Unit shall provide administration of all employee payroll and benefits related to the operation of the Territory, including the administration of group medical insurance benefits, retirement contributions and benefits, worker's compensation coverage and all other employee benefits for full-time, part-time and/or volunteer firefighters employees providing services to the Territory;

ii. The Provider Unit shall provide for and administer all liability insurance coverage for the Territory, and the personnel and equipment serving the Territory. The Provider Unit shall also maintain inland marine, automobile, and property insurance coverages. The Provider Unit shall include as co-insured's on all such policies each Participating Unit, the elected officials of the Participating Unit, the Territory, the Executive Committee, and any other appropriate party. The Provider Unit shall provide the Participating Units with proof of such insurance coverages and the additional insured endorsement naming the Participating Units annually by the anniversary date of this Agreement. Substantive changes in liability insurance coverage or carriers shall be made only after consultation with the approval of the Provider Unit;

iii. The Provider Unit shall submit to the Participating Units a monthly report of all fire protection and emergency services runs in the Territory during the preceding month;

iv. The Provider Unit shall submit biannual reports to the Participating Units including an accounting for all receipts and disbursements from the Fire Protection Fund, the Equipment Replacement Fund, and any other accounts or funds utilized to receive, disburse or hold funds generated or utilized for the purpose of the Territory. The biannual reports shall include the allocation of interest accrued on the investment of Territory Fire Protection Funds held by the Provider Unit.

12. Capital Assets.

a. Penn Township shall be initially responsible for providing all firefighting apparatus and equipment, including housing, for the Territory. If Penn Township has incurred any debt in the acquisition of those assets, Penn Township will be responsible for repaying its respective debts.

b. Penn Township will have the Fire Department staffed 24/7, with staffing levels as approved by the Executive Committee.

c. The Participating Units agree to the establishment of an Equipment Replacement Fund, to be used for the purchase of any additional firefighting apparatus, equipment and housing that will be used to serve the Territory.

i. The property tax rate for the Equipment Replacement Fund levy may not exceed 3 1/3 cents per one hundred dollars (0.0333) of assessed value.

ii. All such acquisitions exceeding \$50,000.00 must be presented by the Provider Unit and approved by the Executive Committee.

e. The Participating Units may acquire firefighting apparatus and equipment, including housing, from monies available in the Equipment Replacement Fund; or through such leases or debt as is permitted by law and approved by the Penn Township Board and Osceola Town Council.

i. All such major acquisitions must be approved by the Executive Committee of the Fire Territory.

ii. Any firefighting apparatus and equipment, including housing, acquired by the Participating Units shall be held, either in joint title by the Participating Units or in the name of another entity established by the Participating Units for that purpose.

13. Transfer of Funds.

Pursuant to IC 36-8-19-8.6, each Participating Unit shall pass a resolution transferring all monies in their respective firefighting funds and cumulative fire funds into the fire fund and equipment replacement fund of the Territory, which transfers shall occur by July 1, 2018.

14. Indemnification. Provider Unit agrees to defend and indemnify the Participating Units against any claims brought or actions filed against the Participating Unit(s) or any officer, employee, or volunteer of the Participating Unit(s) for injury to, death of, or damage to the property of any third person or persons, arising from Provider Unit's performance under this Agreement.

15. Duration. This Agreement shall continue as the binding agreement of the Participating Units until modified or terminated in accordance with the terms and provisions hereof.

16. Amendment. The Participating Units may, from time to time, revise, change or amend the terms and conditions of this Agreement by an amendment in writing making specific reference to the document as an amendment to this Agreement, which must be approved and executed by each of the Participating Units in the same manner as this Agreement unless otherwise specifically provided herein. Any amendment or modification of this Agreement shall take effect immediately upon the approval of the last of the Participating Units to approve such amendment, or at such other time as is specifically designated in the amendment.

17. Subject to Applicable Law. This Agreement, and the respective rights and responsibilities of the Provider Unit, Participating Unit, and the Department, shall be subject to

the laws applicable to this Agreement and to the delivery of fire protection services. The respective rights and responsibilities of the foregoing entities shall be supplemented by any such applicable laws, and to the fullest extent possible, the terms of this Agreement shall govern its interpretation, validity, and performance.

18. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such provision shall be severed from the remainder of this Agreement and the validity and enforceability of the remaining provisions of the Agreement shall not be affected thereby.

19. Ratification. The parties hereby confirm and ratify all actions heretofore taken by the Participating Units for the Territory in furtherance of the purpose of this Agreement for the creation and operation of the Territory.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Indiana. All proceedings related to this contract shall be venued in the Circuit or Superior Courts of St. Joseph County, Indiana.

21. Approval and Effective Date. This Agreement shall be approved upon the adoption by the fiscal body of the Provider Unit and the Participating Unit of an appropriate ordinance or resolution approving and ratifying this Agreement. After approval and execution by the appropriate officers of each Participating Unit, this Agreement shall be recorded with the St. Joseph County Recorder. The effective date of this Agreement shall be the date of recordation with the St. Joseph County Recorder. Within sixty (60) days of the effective date, this Agreement shall be recorded with the DLGF for audit purposes pursuant to I.C. 36-1-7-6.

22. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

23. Withdrawal and Dissolution.

a. Either Participating Unit may withdraw from the Territory, effective July 1 of any calendar year, by passing an appropriate resolution or ordinance after January 1 and before April 1 of that calendar year.

b. In the event that a Participating Unit withdraws from the Territory, the responsibility of the Territory to provide fire protection and emergency medical services to that Participating Unit shall cease as of midnight, June 30 of the year in which the Agreement is terminated.

c. In the event that a Participating Unit withdraws from the Territory, any balances remaining in the Fire Protection Fund or the Equipment Replacement Fund after the payment of all outstanding bills and of any transfers made by the Provider Unit under Section 9(c) shall be divided pro rata between the withdrawing Participating Unit and the remaining Participating

Units in the same proportion as the Participating Units contributed to the Fire Protection Fund during the most recent complete calendar year in which the Territory existed. If the balances remaining in the Fire Protection Fund or the Equipment Replacement Fund are not sufficient to pay all outstanding bills and of any transfers made by the Provider Unit under Section 9(c), the Participating Units shall be required to contribute to the Fire Protection Fund, from the Participating Unit's respective June property tax draws a pro rata amount necessary to cover those costs. The pro rata contribution between the Participating Units shall be in the same proportion as the Participating Units' respective June property tax draws for fire protection. This pro-rata distribution does not apply to funds transferred into the Fire Territory pursuant to paragraphs 13 and 9(b)(iv).

d. In the event that a Participating Unit withdraws from the Territory, any capital assets purchased jointly by the Participating Units will be valued as of the effective date of the withdrawal and the withdrawing Participating Unit will be entitled to a share of that value, as determined by the withdrawing Participating Unit's contribution to the acquisition of the respective capital assets. The remaining Participating Units in the Territory may distribute cash or assets to satisfy the obligation to the withdrawing Participating Unit, at the discretion of the remaining Participating Units. Any asset acquired by and titled to a single unit shall remain the property of that unit.

e. In the event that a Participating Unit withdraws from the Territory, the provisions of IC 36-8-19-9(c) shall apply and the withdrawing Participating Unit shall continue to repay that Unit's share of that indebtedness by imposing a property tax within the boundaries of the Unit until the indebtedness is paid in full. The Department of Local Government Finance shall determine the amount of the indebtedness that represents the withdrawing Participating Unit's fair share, taking into account the equipment purchased, the useful life of the equipment, the depreciated value of the equipment, and the number of years the withdrawing Participating Unit benefited from the equipment.

f. This Agreement shall terminate if there are not at least two (2) Participating Units, one (1) of which is designated as the Provider Unit. In the event of the termination of this Agreement, the provisions of IC 36-8-19-9(c) shall apply and all assets of the Territory, excluding those assets transferred to the Territory by the Participating Units, shall be divided pro rata among the Participating Units.

**PENN TOWNSHIP,
ST. JOSEPH COUNTY**

Nino Portolere
Trustee

APPROVED:

K. O'By
Township Board

Matthew Jentsch
Township Board

Don J...
Township Board

**TOWN OF OSCEOLA,
ST. JOSEPH COUNTY**

John S. Davis
Town Council President

APPROVED:

J. E. E. ...
Town Council

Brenda Cruz
Town Council

Penn Twp

EXHIBIT A

