

DRAFT

23-MAY-2017 – Agreement Subject to Change after this Date

INTERLOCAL AGREEMENT

This Interlocal Agreement (hereinafter referred to as “Agreement”) is made by and between the Town of Whiteland, Indiana, by and through Whiteland Town Council (hereinafter referred to as the “Town”), and the Whiteland Fire Protection District of Johnson County, Indiana, by and through its Board of Fire Trustees (hereinafter referred to as the “District”).

RECITALS

A. The District believes it would be in the best interest of the property owners served by the District to consolidate the fire protection services the District provides with the municipal and public safety services provided by the Town of Whiteland.

B. This Agreement is intended to be a contract between the District and the Town under which the Town will manage and provide the fire protection services to the service territory of the Whiteland Fire Protection District (the “Services”), and allow the District and the Town to coordinate and combine their respective powers and resources so as to together accomplish the Services, with the cost of the services to be funded by the District and for the management, administration, and provision of the Services to be provided by personnel of the Town.

C. It is the intent and desire of the parties that the parties will ultimately reorganize by way of the Government Modernization Act codified at Indiana Code 36-1.5 *et seq.*, with the desired result being that the Town of Whiteland will permanently provide the Services to the Whiteland Fire Protection District (the “Fire District Territory”).

D. Indiana Code 36-8-11-15(a)(15) authorizes the District to enter into agreements with a municipality.

E. Indiana Code 36-1-7 permits interlocal agreements by and between governmental entities. And,

F. The Town of Whiteland and the District are governmental entities.

AGREEMENT

NOW, THEREFORE, the Town of Whiteland and the District, in consideration of the foregoing premises and of the following promises contained herein, agree as follows:

1. MUTUAL REPRESENTATIONS. Each party represents to the other that:

(a) The party has all requisite power and authority to carry out the obligations set forth in this Agreement.

(b) The party has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement.

(c) This Agreement has been duly entered into and delivered and constitutes a legal, valid, and binding obligation of the party.

2. OBLIGATIONS OF THE DISTRICT. Without limiting the foregoing, the District shall be responsible for the following:

(a) Furnishing all of the District's fire-fighting equipment to the Town for the unrestricted use by the Town and its employees, including but not limited to the following:

- i. Portable Pump used and useful in refilling a tanker truck or pumper truck from a farm pond
- ii. Central States 1250 GPM Midship pumper on Freightliner Chassis
- iii. Grainger 4LM43 40 Kw Standby Generator
- iv. Storage Building
- v. Tender 713,000 gallon tank truck
- vi. 2006 Ferrea pumper truck.

(b) Providing the District's fire station along with unlimited access and control of the fire station and the surrounding property owned by the District to the Town and its employees for its use in providing the Services and activities related thereto.

(c) Cooperating with the Town in seeking and obtaining the maximum permissible funding available to the District in a timely manner.

(d) Cooperating with the Town in the preparation and adoption of an agreed upon budget for the administration of the District.

(e) Paying all funds received by the District from time to time, including the funds scheduled to be received by the District in June of 2017, to the Town within five (5) business days of the District's receipt of such funds, which shall not be delayed or withheld for any reason; provided, however, the District shall be permitted to retain the

amount of funds received that equals the amount of debt service payments planned to be paid from such funds. In the event this Agreement is terminated as provided herein, the District shall not be required to pay the Town the District's funds received in the month prior to the effective date of the termination, unless otherwise agreed between the parties. The District agrees that in the event additional funds are needed by the Town to provide the Services, the District will reasonably consider providing additional funds from the District's cash on hand.

(f) Continuing to pay for any and all existing debt of the District. The District shall not enter into any new debt or any other financial obligation of any kind, without the express written consent of the Town.

(g) Appointing a representative to act as liaison with the Town of Whiteland. Until the District appoints an alternative representative, the President of the Board of Fire Trustees shall act as the District's liaison.

(h) Cooperating with the Town and the Whiteland Volunteer Fire Department in obtaining the transfer of the Services from the Whiteland Volunteer Fire Department to the Town, and in obtaining the transfer of the fire equipment and supplies of the Whiteland Volunteer Fire Department to the Town.

(i) Taking all other action necessary or convenient within its authority and to facilitate and accomplish the intent of this Agreement in accordance with applicable law and the terms of this Agreement.

(j) Cooperating with the Town in reasonably addressing all other matters necessary, desirable, or convenient to facilitate and fulfill the provision of the Services contemplated by this Agreement and all other provisions, purposes, and intentions of this Agreement.

(k) The District shall not be liable for loss or damage resulting from any breakdown or mechanical failure in the operation of any firefighting equipment responding to fire calls and emergency rescue.

3. OBLIGATIONS OF THE TOWN. Without limiting the foregoing, the Town of Whiteland shall be responsible for the following:

(a) Providing, through the creation of a Town Fire Department, or otherwise, of reasonable firefighting equipment, emergency rescue equipment, and personnel to the location of any fire call or alarm received by the Town reporting a fire within the Fire District Territory.

(b) Providing the appropriate personnel, with equipment, to respond to fire calls in the Fire District Territory, and the Town shall use its best judgment and effort to extinguish each and every fire and to rescue individuals from peril.

(c) Providing the maintenance and operation of the fire-fighting equipment used by the Town to accomplish the Services.

(d) Providing the maintenance and operation of the fire station(s) used by the Town to accomplish the Services. In the event any non-routine maintenance or major repair of the fire station is required that does not fall within the Town's budget for the Services, the Town shall not be obligated to make or pay for such maintenance or repair items.

(e) Payment of all costs of providing the Services, including without limitation, the costs associated with the fire equipment and fire-fighting personnel contemplated by this Agreement, the costs of operating and maintaining the fire station, the reasonable costs of the administration of the District, and the costs of seeking and obtaining the maximum permissible funding available to the District.

(f) Cooperating with the District in the preparation and adoption of an agreed upon budget for the administration of the District.

(g) Preparation of a budget for the Town's provision of the Services.

(h) Compliance with all rules, regulations, ordinances, statutes, and laws in the performance of the Services during the Agreement term.

(i) **Recording of this Agreement with the Johnson County Recorder promptly after the approval and signing of the Agreement by each party. The Town of Whiteland shall provide the District a recorded copy of this Agreement promptly after recording.**

(j) **Filing a recorded copy of this Agreement with the State Board of Accounts, pursuant to I.C. 36-1-7-6, not later than sixty (60) days after this Agreement is recorded. The Town of Whiteland shall provide the District documentation of such filing promptly after such filing.**

(k) Appointing a representative to act as liaison with the District. Until the Town of Whiteland appoints an alternative representative, the Town Manager shall act as the Town of Whiteland's liaison.

(l) Taking all other action necessary or convenient within its authority and consistent with the intent of this Agreement to facilitate and accomplish the Services in accordance with applicable law and the terms of this Agreement.

(m) Cooperating with the District in reasonably addressing all other matters necessary, desirable, or convenient to facilitate and fulfill the provision of the Services contemplated by this Agreement and all other provisions, purposes, and intentions of this Agreement.

(n) The Town shall indemnify and hold District harmless for any and all charges, judgments, and expenses arising from Town's negligence or breach of duty. The District shall not be liable or held responsible for any personal injury or damage to any individual personnel of the Town or damage to any member of the public at large while performing any emergency service within the scope of Town's responsibilities. The

Town shall carry workman's compensation insurance on its personnel in the statutory amount.

4. **INSURANCE.** The Town of Whiteland shall secure and pay for all reasonable and necessary insurance for public liability and property damage necessitated by the operation of said fire equipment and fire-fighting personnel, and the Town shall name the District as an additional insured on all its insurance policies related to the Town's provision of the Services. A certificate of said insurance and/or a copy of the insurance policies shall be provided to the District upon its request after the execution of this Agreement. The Town shall be responsible for and shall indemnify and hold harmless the District for any uninsured loss or damage to the District's equipment.

5. **CONDITION.** This Agreement is conditioned upon the Whiteland Volunteer Fire Department transferring ownership of all of the equipment and supplies of the Whiteland Volunteer Fire Department to the Town, as needed by the Town to provide the Services.

6. **PROPERTY.** There will be no jointly held property. Except as otherwise provided herein or otherwise agreed, all real and tangible personal property owned by the District prior to the Effective Date of this Agreement, which is listed on the attached Exhibit A incorporated herein, shall continue to be owned by the District, and all property acquired by the Town in the performance of this Agreement after the Effective Date of this Agreement shall be the property of the Town.

7. **FINANCIAL, STAFF, AND SUPPLY RESPONSIBILITY.** Each party shall be responsible for financing, staffing, and supplying their respective obligations and each party's respective treasurer or disbursing office shall be responsible for receiving, dispersing, and accounting for all monies associated therewith. In regards to Indiana Code 36-1-7-16, the parties agree that the maximum allowable funding available to the District is required in order to adequately provide for the Services to be provided under this Agreement and the administration of the District, and that the Indiana Department of Local Government Finance should not make any decrease to the maximum permissible property tax levies, maximum permissible property tax rates, and budgets of the District under IC 6-1.1-17 and IC 6-1.1-18.5.

8. **JOINT BOARD.** The representatives appointed respectively by each party shall constitute a joint board to administer this Agreement.

9. **RELATIONSHIP.** The parties agree that the Town is providing the Services as an independent contractor.

10. **EFFECTIVE DATE.** This Agreement shall be effective upon the latest date of: signing by each party; approval by the fiscal bodies of each party; and recordation of the Agreement with the Johnson County Recorder. Pursuant to I.C. 36-1-7-6, not later than sixty (60) days after it takes effect, this Agreement shall be filed with the State Board of Accounts for audit purposes.

11. **TERM OF AGREEMENT.** The term of this Agreement shall be from 12:01 a.m. on July 1, 2017 through 12:00 o'clock midnight on December 31, 2018.

12. **TERMINATION.** Either party may terminate this Agreement at any time for any reason upon at least ninety (90) days prior written notice to the other party, provided, however, unless otherwise agreed between the parties, no termination shall take effect except at 12:00 o'clock midnight on December 31, 2018. Unless otherwise agreed between the parties, in the event of termination of this Agreement, each party shall retain ownership of its respective property.

13. **FORCE MAJEURE.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster or any other cause genuinely and demonstrably beyond the control of the affected party, and which as a result thereof, causes such nonperformance (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended until the Force Majeure Event is no longer an impediment to performance.

14. **DISPUTE RESOLUTION.** Disputes will be resolved by the executive officers of each party or their designees.

15. **RECORD KEEPING.** Each party shall maintain records relating to their respective obligations. Upon request, each party will make its records available for inspection by the other party.

16. **MUNICIPAL CONTRACT PROVISION.** This Agreement incorporates by reference all provisions required to be included in municipal contracts under state law.

17. **INTEGRATION.** This Agreement represents the entire understanding and agreement between the parties concerning the subject matter of this Agreement. No statements, other agreements or promises, verbal, written or otherwise, except as set forth herein, shall be used to construe this Agreement. No modification or amendment hereof shall be effective unless in writing and signed by each of the parties hereto.

18. **INTERPRETATION.** This Agreement is the result of negotiations between the parties and their respective legal counsel, and no party shall be deemed to be the drafter of this Agreement. The language of all parts of this Agreement shall in all cases be construed liberally and as a whole, according to its fair meaning, and not strictly for or against either party, and in such a manner as to accomplish the intent and purpose of the Agreement. The section headings and titles herein are solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

19. **INCORPORATION OF RECITALS, EXHIBITS, AND SCHEDULES.** All recitals herein and exhibits, schedules and related agreements attached hereto are incorporated herein by this reference and expressly made a part of this Agreement.

20. **NOTICES.** Any notices required or permitted to be given hereunder shall be in writing and delivered either in person, by a nationally recognized overnight delivery carrier, or by certified mail, return receipt requested, with additional copy delivered by email, if such delivery information is known by the sender, to the parties at their respective addresses set forth below, or at such other address as notice of which may have been given to the other party.

To the Town of Whiteland:

Town of Whiteland, Indiana
c/o Town Manager
549 Main Street
Whiteland, Indiana 46184
Phone No: 317-535-5531
Email: townmanager@whitelandin.us

With copy to:

Stephen K. Watson, Attorney
Williams Barrett & Wilkowski, LLP
600 N. Emerson Avenue
Greenwood, Indiana 46142
Phone No: 317-888-1121
Email: swatson@wbwlawyers.com

To the District:

Stephen E. Cavaleri, Board President
Whiteland Fire Protection District
[insert address and contact info]

With copy to:

Dustin D. Huddleston, Attorney
Huddleston & Huddleston
Clarke House
98 West Jefferson Street
Post Office Box 9
Franklin, Indiana 46131
Phone No.: (317) 736-5121
Email: dustin@huddlestonlaw.com

Any notice given to a party at the party's address specified herein shall be deemed to have been duly given or delivered: a) on the date the same is personally delivered to the recipient as evidenced by a duly acknowledged written receipt, b) on the date the same is received by the recipient as evidenced by a returned postal receipt, c) on the date the recipient delivers a non-automated email message acknowledging receipt of the notice by email or otherwise, or d) on the date the notice is timely delivered to a nationally recognized overnight delivery carrier for delivery on the next business day.

21. **DUPLICATES.** This Agreement shall be executed in at least two (2) duplicates, with at least one originally executed version for each party.

(Remainder of page intentionally left blank.)

THE WHITELAND FIRE PROTECTION DISTRICT, JOHNSON COUNTY, INDIANA

By and through the
**BOARD OF FIRE TRUSTEES OF THE WHITELAND FIRE PROTECTION DISTRICT,
JOHNSON COUNTY, INDIANA**

Stephen E. Cavaleri, Board President

Dated: _____

APPROVED AND AUTHORIZED BY THE BOARD
OF FIRE TRUSTEES OF THE WHITELAND FIRE PROTECTION DISTRICT, JOHNSON
COUNTY, INDIANA
AT A PUBLIC MEETING ON THE ____ DAY OF _____, 201__

APPROVED AS TO LEGAL FORM

Dustin D. Huddleston, Attorney for the
Board of Fire Trustees of the Whiteland Fire Protection District

STATE OF INDIANA)
)
COUNTY OF JOHNSON) SS:

Before me, the undersigned, a Notary Public, in and for said County and State, personally
appeared _____ of the Board of Fire Trustees of the Whiteland Fire
Protection District, who acknowledged the execution of the foregoing Interlocal Agreement.

Witnesseth my hand and Notarial Seal this ____ day of _____, 201__.

Commission Expiration Date

Notary Public Signature

County of Residence

Notary Public Printed

**I affirm, under the penalties for perjury, that I have taken reasonable care to redact each
Social Security number in this document, unless required by law. Stephen K. Watson**

*This instrument prepared by: Stephen K. Watson, Attorney at Law, WILLIAMS BARRETT & WILKOWSKI, LLP.,
600 N. Emerson Ave., P.O. Box 405, Greenwood, IN 46142 (317) 888-1121*

EXHIBIT A

List of real and tangible personal property owned by the District

1. Fire Station located at 141 S. State Street, Whiteland, IN 46184
2. Portable Pump used and useful in refilling a tanker truck or pumper truck from a farm pond
3. Central States 1250 GPM Midship pumper on Freightliner Chassis
4. Grainger 4LM43 40 Kw Standby Generator
5. Storage Building
6. Tender 713,000 gallon tank truck
7. 2006 Ferrea pumper truck.
8. [Add any other items that are of significance]

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