

AMENDED INTERLOCAL AGREEMENT

BETWEEN

**PARTICIPATING POLITICAL SUBDIVISIONS AS SIGNATORIES TO THIS
INTERLOCAL AGREEMENT**

CREATING THE

**OAKWAY MUTUAL AID ASSOCIATION AND
MUTUAL AID BOX ALARM SYSTEM DIVISION 3202**

A Michigan Public Body Corporate

THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT is entered into by _____ and the other political subdivisions that approve and sign this Agreement referred to in this Agreement as “Party” and collectively as the “Parties.”

RECITALS:

WHEREAS, each Party has the power, privilege, and authority to maintain and operate a fire department providing fire protection, fire suppression, transporting emergency medical services, technical rescue services, hazardous incident response and other emergency response services (“Fire Services”) and provides such Fire Services as a paid, career Fire Department; and

WHEREAS, Fire Services can further be improved by cooperation between political subdivisions during times of public emergency, conflagration, or disaster (“Incidents”); and

WHEREAS, the Michigan Constitution of 1963, Article 7, § 28 and the Urban Cooperation Act of 1967, Act No. 7 of the Public Acts of 1967, Ex. Sess., being MCL 124.501 *et seq.* of the Michigan Compiled Laws (the “Act”), permit a political subdivision to exercise jointly with any other political subdivision any power, privilege, or authority which such political subdivisions share in common and which each might exercise separately; and

WHEREAS, the Parties desire to enter into an interlocal agreement, pursuant to the Act, to further improve Fire Services; and

WHEREAS, as a result of entering into an interlocal agreement to further improve Fire Services, the Parties are creating the Oakway Mutual Aid Association and Mutual Aid Box Alarm System Division 3202 (“MABAS 3202”), as a separate legal entity and a public body corporate (the “Association”) pursuant to the Act; and

WHEREAS, each Party has the authority to execute this Agreement pursuant to a resolution of its governing body; and

WHEREAS, each Party desires to commit personnel and equipment to another Party upon request of another Party as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, undertakings, understandings, and agreements set forth in this Agreement, and the background facts presented above, it is hereby agreed as follows:

ARTICLE I DEFINITIONS

The Parties agree that the following words and expressions, as used in this Agreement, whenever initially capitalized, whether used in the singular or plural, possessive or non-possessive, either within or without quotation marks, shall be defined and interpreted as follows:

Section 1.01. Agreement. “Agreement” means this Agreement creating the Oakway Mutual aid Association and Mutual Aid Box Alarm System 3202.

Section 1.02. Association Board. “Association Board” means the board of the Association created by this Agreement.

Section 1.03. Bylaws. “Bylaws” means such rules and procedures for the operation of the Association as established by the Association Board and as may from time to time be amended by the Association Board.

Section 1.04. Days. “Days” means calendar days.

Section 1.05. Fire Apparatus. “Fire Apparatus” means vehicles and equipment of a Party used in performing Fire Services.

Section 1.06. Fire Chief. “Fire Chief” means the chief of a Fire Department, or Executive Officer of Fire Operations within a public safety department.

Section 1.07. Fire Department. “Fire Department” means the operating fire department of a Party.

Section 1.08. Fire Fighters. “Fire Fighters” means personnel qualified and trained in providing Fire Services.

Section 1.09. Fire Services. “Fire Services” means providing fire protection, fire suppression, transporting emergency medical services, special operations, and such other services as may be set forth in the Bylaws for an Incident.

Section 1.10. Fiscal Year. “Fiscal Year” means the fiscal year of the Association starting on January 1 and ending on December 31st of each year.

Section 1.11. Incident. “Incident” means a public emergency, conflagration, or disaster.

Section 1.12. Member. “Member” means the Fire Chief appointed by a Party to serve on the Association Board.

Section 1.13. Mutual Aid Box Alarm System. “Mutual Aid Box Alarm System,” or “MABAS,” means a definite and prearranged plan whereby response and assistance is provided to a requesting Party by an assisting Party in accordance with the system established and maintained by MABAS members.

Section 1.14. Open Meetings Act. “Open Meetings Act” means Act No. 267 of the Public Acts of 1976, as amended, being MCL 15.261 et seq.

Section 1.15. Party. “Party” means a political subdivision which is a signatory to this Agreement.

Section 1.16. Standard Operating Guideline. Standard Operating Guideline “SOG” means such rules and procedures for the operation of the Association as established by the Association Board and as may from time to time be amended by the Association Board.

Section 1.17. State. “State” means the State of Michigan.

ARTICLE II ESTABLISHMENT OF THE ASSOCIATION

Section 2.01. Establishment and Legal Status of the Association. The Parties intend and agree that MABAS 3202 is established as a separate legal entity and public body corporate pursuant to the Act and this Agreement.

Section 2.02. Name of Association. The name of the Association is “Oakway Mutual Aid Association and Mutual Aid Box Alarm System Division 3202” (“MABAS 3202”).

Section 2.03. Federal Tax Status. The Parties intend that the Association shall be exempt from federal income tax under Section 115(1) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any future tax code.

Section 2.04. State and Local Tax Status. The parties intend that the Association shall be exempt from all State and local taxation including, but not limited to, sales, use, income, single business, and property taxes under the applicable provisions of the laws of the State.

Section 2.05. Title to Association Property. All property is owned by the Association as a separate legal entity. The Association may hold any of its property in its own name or in the name of one (1) or more nominees, as determined by the Parties.

Section 2.06. Compliance with Law. The Association shall comply with all federal and State laws, rules, regulations, and orders applicable to this Agreement.

Section 2.07. Principal Office. The principal office of the Association (“Principal Office”) shall be at such locations determined by the Association Board.

ARTICLE III PURPOSE

Section 3.01. Purpose. The purpose of the Association shall include joint exercise of the shared and essential governmental power, privilege, or authority of the Parties for the mutual protection of persons and property without regard to boundary lines between the Parties during incidents as provided in this Agreement.

Section 3.02. Major Activities. The major activities of the Association in the exercise of this shared power shall be the cooperative efforts of the Parties in lending personnel and equipment for Fire Services. Additional activities include facilitating cooperative efforts of the Parties in planning, preparedness, exercise and training for Incidents.

ARTICLE IV SHARED POWERS

Section 4.01. Shared Powers of the Association. In carrying out the purpose as set forth in Article III of this Agreement, the Association is authorized to perform the following, either independently or with any individual or legal entity, subject to the limitations contained in this Agreement:

- (a). Sue and be sued;
- (b). Make, execute, and deliver contracts, conveyances, and other instruments that are necessary or convenient;
- (c). Make and amend bylaws;
- (d). Solicit and accept gifts, grants, loans, and other aids from any individual or legal entity or to participate in any other way in any federal, State, or local government program;
- (e). Procure insurance against any loss in connection with the Association's property or activities;
- (f). Engage personnel as is necessary and engage the services of private consultants, managers, counsel, auditors, and others for rendering professional management and technical assistance and advice;
- (g). Charge, impose, and collect fees and charges in connection with any transactions or services as approved by the Association Board;
- (h). To the extent allowed by law, indemnify and procure insurance indemnifying any members of the Association Board, officers, or employees for personal loss or accountability from liability asserted by any individual or legal entity for any acts or omissions of the Association;

(i). Borrow money and incur debts, liabilities, or obligations. The debts, liabilities, or obligations of the Association shall not constitute debts, liabilities, or obligations of any Party; and

(j). Exercise any and all other necessary and proper powers to effectuate the purposes and intent of this Agreement.

ARTICLE V
ADDITIONAL POWERS; LIMITATION ON POWERS; NO WAIVER
OF GOVERNMENTAL IMMUNITY

Section 5.01. Additional Powers. In addition to the powers set forth in Article IV of this Agreement, the Association is authorized to:

(a). Form and own other legal entities to further the purposes of this Agreement; and

(b). Cooperate with a political subdivision, an instrumentality of that political subdivision, or other legal or administrative entity created under the Act.

Section 5.02. Limitation of Powers. The Association may not:

(a). Levy any type of tax; or

(b). Incur debts, liabilities, or obligations that constitute debts, liabilities, or obligations of any Party.

Section 5.03. No Waiver of Governmental Immunity. The Parties agree that no provision of the Agreement is intended, nor shall any provision be construed, as a waiver by any Party of any governmental immunity provided by law.

**ARTICLE VI
DURATION, WITHDRAWAL, AND TERMINATION OF
INTERLOCAL AGREEMENT**

Section 6.01. Duration. The existence of the Association commences on January 1, 2019, or as soon thereafter as this Agreement is filed under the Act with at least two Parties as signatories (“Effective Date”), and continues until terminated in accordance with Section 6.03.

Section 6.02. Withdrawal by a Party. Any Party may withdraw from the Agreement at any time upon thirty (30) Days notice to the Association. The withdrawal of any Party shall not terminate nor have any effect upon the provisions of the Agreement so long as the Association remains composed of at least two (2) Parties.

Section 6.03. Termination. This Agreement shall continue until terminated by the first to occur of the following:

- (a). The Association consists of less than two (2) Parties; or
- (b). Unanimous vote of termination by the Association Board.

Section 6.04. Disposition upon Termination. As soon as possible after termination of this Agreement, the Association shall wind up its affairs as follows:

- (a). All of the Association’s debts, liabilities, and obligations to its creditors and all expenses incurred in connection with the termination of the Association and distribution of its assets shall be paid first.
- (b). Assets that were transferred to the Association by any Party that remain with the Association at the time of termination shall be returned to that Party.
- (b). The remaining assets, if any, shall be distributed to the Parties on an equitable basis as determined by the Association Board.
- (c). All of the Association’s records shall be maintained by any Member possessing Association records as set forth in the Association’s Bylaws, whether in hard copy or electronic format, and for a period of two (2) years after termination of this Agreement, or longer if required by law.

**ARTICLE VII
ASSOCIATION BOARD**

Section 7.01. Association Board Composition. The governing body of each Party shall appoint one (1) Member to the Association Board who shall serve at the pleasure of the governing body of the appointing Party. In the absence of a specific appointment by a Party’s governing body, its Fire Chief shall be its appointed representative.

Section 7.02. Association Board Authority. The Association Board shall exercise the powers of the Association. The Association Board shall elect a President, Vice-President, Secretary, and Treasurer, and such other officers as it deems necessary, from the membership, and the duties of the officers may be set forth in the Bylaws. The Association may combine the elected offices of Secretary and Treasurer. The Association Board shall select a Member and an alternate to serve as the voting representative on the Michigan MABAS Executive Board. The Association Board shall select a Member to serve as Plans Coordinator. The Association Board may establish committees as it deems necessary.

Section 7.03. Meetings. The Association Board shall hold at least one (1) annual meeting at the place, date, and time as the Association Board shall determine. Additional meetings shall take place as provided in the Bylaws. Meetings shall comply with the Open Meetings Act and the Bylaws.

Section 7.04. Quorum and Voting. Members constituting a majority of the Association Board shall be required to constitute a quorum for the transaction of business and a majority vote at a meeting at which a quorum is present shall be necessary for the transaction of business. Presence in person shall be required for both quorum and voting. In the event that an Association Member cannot attend the meeting, a pre-identified proxy can attend and vote in the Association Member's stead, as stated in the Bylaws.

Section 7.05. Fiduciary Duty. The Members of the Association Board are under a fiduciary duty to conduct the activities and affairs of the Association in the best interests of the Association, including the safekeeping and use of all Association monies and assets for the benefit of the Association. The Members of the Association Board shall discharge this duty in good faith with the care an ordinarily prudent individual in a like position would exercise under similar circumstances.

Section 7.06. Compensation. The Members of the Association Board shall receive no compensation for the performance of their duties, but each Member shall be reimbursed for the reasonable expenses of its Member in carrying out those duties. Each Party shall appoint its Fire Chief to represent its municipality as a member of the Association Board.

ARTICLE VIII PARTY CONTRIBUTION

Section 8.01. Fire Fighters. Each Party shall make available without cost to the Association or any other Party such Fire Fighters as set forth in the Bylaws who will actively participate in Incidents if assistance is requested. These Fire Fighters shall remain at all times employees of the Party providing them and shall continue to be solely in that Party's benefit system including wages, pension, seniority, sick leave, vacation, health and welfare, longevity, and other benefits, if applicable.

Section 8.02. Fire Apparatus. Each Party shall make available without cost to the Association or any other Party such Fire Apparatus as set forth in the Bylaws.

ARTICLE IX FIRE SERVICES

Section 9.01. Requests for Fire Services. A Party's Fire Chief, the ranking officer on duty, or other officer as designated by the Fire Chief, shall have the right to initiate requests for Fire Services at such times as deemed to be in the best interests of the Party to do so. When initiating requests for Fire Services, each Fire Department shall use MI-MABAS box cards.

Section 9.02. Response to Request for Fire Services. Upon a Fire Department's receipt of a request from another Party for Fire Services, the Fire Chief, the ranking officer on duty, or other officer as designated by the Fire Chief shall have the right to commit the requested Fire Fighters, other personnel, and Fire Apparatus to the assistance of the requesting Party. A Party shall provide Fire Services to any other Party upon request provided that the Fire Fighters and Fire Apparatus of the requested Party are not already engaged in providing Fire Services within the geographic boundaries of the requested Party, or elsewhere, in a manner precluding the extension of Fire Services to the requesting Party. A Party shall always have the right to maintain the operational capacity of its own jurisdiction. A Party which has withheld or refused or provide requested assistance under this Agreement shall immediately notify the requesting Party, and if requested, shall submit a written explanation for the refusal to the Association Board and requesting Party within ten (10) days of the refusal.

A Party responding to a request for Fire Services shall not be required to maintain Fire Fighters or Fire Apparatus within the boundaries of the Party requesting Fire Services for a period longer than is necessary. Additional response guidelines may be established by the Association Board or by the Bylaws.

Section 9.03. Mutual Aid Box Alarm System. Response of mutual aid resources shall be in accordance with the Mutual Aid Box Alarm System in place at the time of the request. This Agreement replaces and supersedes any and all mutual aid box alarm system agreements by and between the Parties to this Agreement, except for the Michigan Mutual Aid Box Alarm System Agreement.

Section 9.04. Incident Management System. Command, control, and coordination at the Incident shall be based on a nationally recognized Incident Management System, as set forth in writing by a Party to the Association. The Fire Chief, the ranking officer on duty, or other officer of the requesting Party shall be the officer in charge of the operations at the Incident. All Fire Fighters, other personnel, and Fire Apparatus of a responding Party shall be under the command and control of the highest commanding officer of the responding Party. All directives and orders by the officer in charge of operations at the Incident regarding Fire Fighters, other personnel, and Fire Apparatus shall be directed to the highest ranking officer attached to the responding Party.

Section 9.05. Obligations to non-Parties. This Agreement shall not release any Party from any other obligations or agreements such Party may have with any individual or legal entity relating to Fire Services that is not a Party to this Agreement.

ARTICLE X

ADMISSION AND REMOVAL OF PARTIES

Section 10.01. Admission. After the Effective Date, additional municipalities may become a Party to this Agreement with the approval by resolution adopted by that municipality's legislative body and upon two thirds (2/3rds) approval of the Members of the Association Board present at the meeting when the vote is taken. A new Party shall submit a signed copy of this Agreement to the Association Board and its appointment of a Member to the Association Board shall be effective upon filing the Agreement as set forth in the Act.

Section 10.02. Removal. A Party may be removed from the Association upon a two thirds (2/3rd) vote of the Members of the Association Board present at the meeting when the vote is taken.

ARTICLE XI BOOKS AND REPORTS

Section 11.01. Accrual Basis. The Association shall maintain its books of account on an accrual basis of accounting.

Section 11.02. Financial Statements and Reports. The Association shall cause financial statements (i.e. balance sheet, statement of revenue and expenses, statement of cash flows, and statement tracking changes in fund balance) to be prepared at least annually at Association expense. A copy of the various financial statements shall be provided to each Party.

ARTICLE XII FINANCES

Section 12.01. Assessment. The Association Board shall determine dues, fees, and assessments to be contributed by each Party, the amount of which and payment procedure shall be set forth in the Bylaws.

ARTICLE XIII MISCELLANEOUS

Section 13.01. Liability. Each Party will be solely responsible for the acts of its own employees, agents, and subcontractors, the costs associated with those acts, and the defense of those acts. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement. The Parties shall not be responsible for any liability or costs associated with the acts, or the defense of the acts, of Parties outside of their political jurisdictions, but will make personnel available for any legal process upon request of a Party defending a claim relating to services provided pursuant to this Agreement. It is agreed that none of the Parties shall be liable for failure to respond for any reason to any request for Fire Services or for leaving the scene of an Incident with proper notice, or without significant notice in the case of an emergency, after responding to a request for service.

Section 13.02. Entire Agreement. This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior

agreements or understandings between them in any way related to the subject matter hereof. It is further understood and agreed that the terms and conditions herein are contractual and that there are no other agreements, understandings, contracts, or representations between the Parties in any way related to the subject matter hereof, except as expressly stated herein.

Section 13.03. Severability of Provisions. If any provision of this Agreement, or its application to any person or circumstance, is invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances is not affected but will be enforced to the extent permitted by law.

Section 13.04. Governing Law. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced, and governed under the laws of the State of Michigan without regard to the doctrines of conflict of laws. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

Section 13.05. Captions. The captions, headings, and titles in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.

Section 13.06. Terminology. All terms and words used in this Agreement, regardless of the numbers or gender in which they are used, are deemed to include any other number and any other gender as the context may require.

Section 13.07. Cross-References. References in this Agreement to any Article include all Sections, subsections, and paragraphs in the Article; references in this Agreement to any Section include all subsections and paragraphs in the Section.

Section 13.08. Jurisdiction and Venue. In the event of any disputes between the Parties over the meaning, interpretation, or implementation of the terms, covenants, or conditions of this Agreement, the matter under dispute, unless resolved between the Parties, or unless an alternative is agreed upon by the Parties, shall be submitted to the courts of the State of Michigan, with original jurisdiction and venue vested in the Oakland County Circuit Court.

Section 13.09. Recitals. The Recitals shall be considered an integral part of this Agreement.

Section 13.10. No Third Party Beneficiaries. Except as expressly provided herein, this Agreement does not create, by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, right of indemnification (i.e., contractual, legal, equitable, or by implication), right of subrogation as to any Party's rights in this Agreement, or any other right of any kind in favor of any individual or legal entity.

Section 13.11. Amendment. The Agreement may be amended or an alternative form of the Agreement adopted only upon written agreement of the Parties.

Section 13.12. Counterpart Signatures. This Agreement may be signed in counterpart. The counterparts taken together shall constitute one (1) Agreement.

By their signatures, the undersigned represent that they are duly authorized to sign this Agreement on behalf of, and to bind, their respective municipalities, and the municipalities listed hereafter shall constitute the membership of the Association upon their respective execution of this Agreement:

[Individual Municipal Signature Pages Follow]

COMMUNITY: _____

Address: _____

WITNESSES:

BY: _____

ITS: _____

DATE: _____

BY: _____

ITS: _____

DATE: _____