

**AGREEMENT BETWEEN
THE CITY OF FISHERS AND DELAWARE TOWNSHIP
HAMILTON COUNTY, INDIANA FOR EMS AND FIRE PROTECTION SERVICES**

This agreement ("Agreement"), is made and entered into this 27th day of January, 2017, by and between the City of Fishers, One Municipal Drive, Fishers, Indiana 46038 ("Fishers"), and Delaware Township, Hamilton County, Indiana ("Delaware").

WITNESSETH:

WHEREAS, Delaware desires to avail itself of the fire protection and emergency medical service (EMS) offered and provided by Fishers and to compensate Fishers for such services; and,

WHEREAS, Fishers is desirous of providing such services and to be fairly compensated therefore.

NOW, THEREFORE, it is mutually agreed and undertaken by and between the parties as follows:

1. Fishers agrees to furnish to Delaware fire protection and emergency medical service for a period beginning January 1, 2017, and continuing through December 31, 2017, unless sooner terminated by either party as provided hereafter. Fishers agrees to continue such services until Delaware has retained alternative fire protection and emergency medical service in accordance with Section 23 of this Agreement.

2. Fishers shall answer all calls received from the Hamilton County E-9-1-1- Unified Emergency Communication District to extinguish fires and for emergency medical services occurring within the service area of Delaware; meaning the portion of Delaware Township of Hamilton County that is not a part of the City of Fishers or the City of Noblesville, which is more particularly described in Exhibit A, attached hereto and incorporated herein, with the necessary personnel and equipment consistent with firefighting and EMS practices and procedures provided within the municipal boundaries of Fishers.

3. Fishers agrees to provide the above services on a twenty-four (24) hour a day, seven (7) day a week basis for the term of this Agreement.

4. Delaware agrees to compensate Fishers based upon a ratio of certified assessed value of that portion of Delaware Township covered by Fishers Fire Department outside Fishers' municipal boundary compared to the total certified assessed value for Delaware Township, Fishers, and that portion of Delaware Township covered by Fishers Fire & Emergency Services. For 2017, that percentage is limited to a maximum of 1.52% of the current Fishers Fire/EMS Budget of \$20,037,369 resulting in a total amount of \$303,965.68. The lease payments for fire stations #91, #92, #93, #94, #95 and #96 are not included. There was no unexpended credit from 2015, **therefore Delaware shall compensate Fishers Three Hundred Three Thousand Nine Hundred Sixty-Five and 68/100 Dollars (\$303,965.68) for the services described herein.**

A. Payment for services will be due in the following installments: half of Delaware's obligation as calculated above is due on or before June 30, 2017; the balance is due on or before December 31, 2017.

B. If Fishers does not expend 95% of their entire budget amount for Fire Protection, Delaware shall be entitled to a "credit" toward its 2018 contribution for its percentage of the remaining budget which is unused. That credit shall be calculated by applying 1.64% to the unused budgeted amount. Such credit shall be deducted from the total due in order to calculate the amount. Further, amounts encumbered by December 31, 2017 shall be expended within 90 days or be added to unused budgeted amount for this credit calculation. To the extent known, any credit for the 2018 budget shall be included in Fishers' preliminary budget proposal, submitted according to Section 22 herein. Any credit determined after Fishers' submission of its preliminary budget shall be delivered to Delaware within a reasonable time period.

C. Within thirty (30) days of receiving a written request, Fishers shall provide Delaware verification of changes made in the Fishers' Fire Budget. Such changes include all transfers of budgeted amounts between major and minor line items.

D. Fishers shall be under no obligation to provide fire service and emergency medical service for Delaware in the event that Delaware defaults or terminates its payments under this Agreement.

E. Delaware shall not be deemed to be in default if funds to make payments hereunder have not been disbursed to Delaware by the appropriate governmental agencies as of June 30, 2017, and December 31, 2017. In the event, and only in the event, that the State of Indiana and/or the County of Hamilton fails to make timely distributions to Delaware, which therefore prevents Delaware from making timely payments pursuant to this Agreement, the deadline for such payments shall be extended thirty (30) days from the date of actual distribution from the State of Indiana and/or the County of Hamilton. In the event monies appropriated by governmental agencies fail to make timely distributions to Delaware as provided in this section, Delaware shall promptly notify Fishers.

5. Fishers agrees to purchase all materials and supplies, pay all compensation to Fire Department Employees, pay the costs of the operation of said fire department and carry all necessary insurance on the Department and on all equipment of Fishers and Delaware. Fishers further agrees that its fire protection services and EMS will comply with all federal, state, and local laws and statutes including areas of personnel safety and training. At Delaware's request, a copy of the City's General Liability Insurance Policy covering the fire department shall be furnished to Delaware.

6. Subject to Section 24 herein, this Agreement may be terminated by either party upon sixty (60) days written notice. The terminating party shall also give notice of its intent to terminate to all other parties required to receive such notice prior to the termination becoming effective. Said notice shall be mailed to Delaware or Fishers at the addresses below, by certified mail, return receipt requested.

7. A copy of this Agreement and all notices, amendments, changes or alterations thereto may be mailed to the Insurance Service Office of the State of Indiana by the Township immediately upon becoming effective.

8. Fishers shall assume no responsibility for delays in answering alarms if the delays are caused by Fishers' inability to immediately respond because of other calls or circumstances beyond the control of Fishers. However, it is anticipated that Fishers will immediately request that vehicles of equal caliber be dispatched to such fire calls.

9. Fishers agrees to carry all necessary insurance to comply with applicable state, federal and local laws and regulations governing municipalities for any life insurance required under current Indiana statutes and regulations. Fishers shall provide Delaware with certificates indicating such coverage and showing Delaware as co-insured as their interests respectively may appear.

10. The parties agree that all equipment of whatever kind and nature owned by Delaware Township presently in use by Fishers or added to the existing equipment during the life of this Agreement shall remain in the possession of Fishers Fire & Emergency Services throughout the life of this Agreement.

11. Fishers further agrees to hold Delaware harmless and indemnify Delaware for injuries suffered to the property or person of their parties. Notwithstanding the foregoing or anything to the contrary contained herein, Delaware hereby acknowledges and agrees that Fishers' financial exposure for certain claims is limited by the Indiana Tort Claims Act, and Fishers' obligation to indemnify and save Delaware, its agents and employees harmless from and against any and all claims, damages, demands, penalties, costs, liabilities, losses, and expenses (including reasonable attorneys' fee and expenses at the trial and appellate levels) arising out of or related to claims subject to the Indiana Tort Claims Act shall be limited to the amount of damages available pursuant to Indiana Code section 34-13-3-4, as amended.

12. Fishers agrees to provide Delaware with available information necessary to satisfy inquiries of the Department of Local Government Finance and the Indiana State Board of Accounts for the period of this Agreement. Fishers further agrees to make available to Delaware quarterly reports of maintenance upon any equipment fully or partially owned by Delaware which Delaware authorized Fishers to use if requested. Fishers further agrees to provide Delaware with standardized quarterly run reports which may include the type of response in each grid of the Delaware Township area outside of the City of Fishers, if requested.

13. At Delaware's request, Fishers further agrees to provide Delaware with a copy of the standard Comprehensive Annual Financial Report prepared by Fishers, which shall include all income and expenses to and by the Fire Department.

14. Fishers shall make all necessary reports to the State Fire Marshal's Office and other State and local offices, of fire runs made, maintenance, repairs and training, as required by the State of Indiana or agreed to by the parties hereto.

15. The execution of this Agreement and the fulfillment of the terms, obligations and responsibilities hereunder totally satisfy all liabilities, responsibilities and obligations between the parties of whatsoever kind of nature and will act as a total satisfaction of Delaware's obligation to Fishers for providing fire protection and emergency medical service in Delaware Township, Hamilton County, Indiana, and shall operate as a defense to any lawsuit or litigation questioning the caliber and quality of fire protection provided by Fishers to Delaware.

16. The terms set forth in this Agreement may be altered or amended only in writing and signed by the parties.

17. This Agreement supersedes and replaces any prior Agreements or understandings which may have existed between parties hereto. This Agreement constitutes the full and complete agreement of the parties with regards to the subject matter hereof.

18. If any paragraph, sentence, or portion of this Agreement is declared by a court competent jurisdiction or other quasi-judicial authority to be illegal or unenforceable, such declaration shall not impair or affect the remainder hereof, which shall be in full force and effect and binding upon the parties.

19. Whenever the context requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be deemed to include and designate the masculine, feminine, or neuter genders.

20. This Agreement shall be governed by and construed under the laws of the State of Indiana without regard to choice of law principles. Delaware and Fishers, to the extent provided by law, waive their right to a jury trial in any matter arising out of this Agreement and this waiver is absolute and unconditional.

The parties shall endeavor to resolve their claims by mediation administered pursuant to the Indiana Rules for Alternative Dispute Resolution in effect on the date of the Agreement. The parties shall equally share the mediator's and any filing fees. The mediation shall be held in Fishers, Indiana, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

In the event of any litigation between Fishers and Delaware that arises out of or relates to this Agreement, the "prevailing party" in such litigation shall be entitled to recover its attorneys' fees incurred in the litigation. For purposes of this paragraph, the term "prevailing party" shall mean the party that recovers all or substantially all of the relief requested in its pleadings, and includes attorney's fees incurred in the collection or enforcement of any judgment. The parties agree that the exclusive and sole venue for any claim arising out of or relating to the Contract shall be any court of competent jurisdiction located in Hamilton County, Indiana.

21. In order to facilitate communications between Fishers and Delaware, the following individuals are designated as the persons to whom all inquiries or communications should be directed on behalf of their respective entity via mail, email, or phone:

DELAWARE

Deborah R. Driskell
Township Trustee
9090 East 131st Street
Fishers, Indiana 46038
ddriskell@delawaretownship.net
317.842.8595

FISHERS

Steven Orusa
Fishers Fire Chief
Two Municipal Drive
Fishers, Indiana 46038
orusas@fishers.in.us
317.595.3201

With a copy of any notice
required under this Agreement to:
Chris Greisl, City Attorney
One Municipal Drive
Fishers, IN 46038
greislc@fishers.in.us
317.595-3414

22. Fishers acknowledges and agrees that in order to meet the annual budget requirements of Delaware, that it will attempt to submit a preliminary budget proposal to Delaware on or before August 1, 2017, for the 2018 budget process.

23. The parties hereto acknowledge and agree that firefighting service and EMS are essential to the health, safety and welfare of the citizens of their respective jurisdictions and that by reason thereof, the parties should make every effort to estimate the 2018 amounts prior to the finalization of budgets for 2018. The formula for determining amounts shall equal that entity's share of the total assessed value in the area. If they are not able to reach a mutually satisfactory agreement, then each party may proceed to meet the obligation to provide for the health, safety and welfare of the citizens of their respective jurisdictions, in particular, firefighting services, in any manner they deem appropriate, at the conclusion of this agreement on December 31, 2017. However, Fishers agrees to provide fire protection services until Delaware has obtained alternative fire protection within the time frame specified in sections six (6) and twenty four (24) of this Agreement.

24. In the event this Agreement is terminated before approval of the 2018 agreement, Fishers' obligation to provide fire protection services shall not exceed ninety (90) days past the effective date of termination. Fishers' rate of compensation shall be equal to the daily rate under the terms of this Agreement. That rate shall be computed at Eight Hundred Thirty-Two and 78/100 Dollars (\$832.78) per day, or \$303,965.68 /365 days.

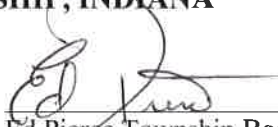
25. This Agreement shall become effective upon its execution by both parties.

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IN WITNESS WHEREOF, the parties hereto set their hand on the dates first written above:

DELAWARE TOWNSHIP, INDIANA


Deborah Driskell Township Trustee
3.14.17


Ed Pierce Township Board President


Rick Fain Township Board Member


Marilyn Schenkel Township Board Member

**BOARD OF PUBLIC WORKS &
SAFETY, CITY OF FISHERS
HAMILTON COUNTY, INDIANA**

AYE

NAY

	Scott Fadness, Chairman	
	Jeff Lantz, Member	
	Jason Meyer, Member	

ATTEST: _____
Jennifer L. Kehl, City Clerk

DATE: _____

This instrument prepared by: Christopher P. Greisl, City Attorney, City of Fishers One Municipal Drive,
Fishers, IN 46038

EXHIBIT A

Service Area of Delaware Township

